18-51

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~341~~ 133

THE SHIP SAPPHIRE, ETC., G. C. TRUEFANT AND J. R. TIBBITS, CLAIMANTS, APPELLANTS,

vs.

NAPOLEON III, EMPEROR OF THE FRENCH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED JANUARY 30, 1872.

OCT 3 1872

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1 At a stated term of the circuit court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Saturday, the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and seventy-one:

Present, the Honorable Lorenzo Sawyer, judge.

Order allowing mandate spread on minutes.

SHIP "SAPPHIRE," &C.
vs.
NAPOLEON III.

On motion of H. McAllister, esq., it is ordered that the mandate of the Supreme Court of the United States herein be filed and spread upon the minutes of the court, and that the cause be set for argument on the 8th day of August, instant.

2 *Mandate.*

UNITED STATES OF AMERICA, *ss:*

SEAL OF U. S. S. C.

The President of the United States of America to the honorable the judges of the circuit court of the United States, for the district of California, greeting:

Whereas, lately in the circuit court of the United States for the district of California, before you, or some of you, in a cause between The Ship "Sapphire," G. C. Truefant and J. R. Tibbetts, claimants and appellants, and the Emperor of the French, Napoleon III., libellant and appellee, wherein the decree of the said circuit court entered in said cause on the 2d day of July, A. D. 1869, is in the following words, viz:

"This case having been brought on for hearing on appeal from the district court of the United States for the district of California, upon the transcript on file, and no new proofs having been taken in the cause in this court, and said transcript and arguments of the advocates for the respective parties having been examined and heard: Now, on this day, it is ordered, pronounced, and decreed that the said libellant and appellee do have and receive of this said claimants and appellants,

3 the sum of fifteen thousand dollars, and the cost taxed in the court below, at one hundred and fifteen dollars and fifty cents, and also the costs to be taxed in this court.

"And it is further ordered, pronounced, and decreed that a summary judgment be, and the same hereby is, entered against G. C. Truefant and J. R. Tibbetts, the appellants, and Henry B. Williams and Henry P. Blanchard, sureties on the appeal-bond, on file herein, for the said amounts; and that the libellant and appellee do have execution therefor," as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and seventy, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel: On consideration whereof, it is now here, ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and

the same is, hereby reversed, with costs; and the said claim-
4 ants and appellants recover against the said libellant and appellee, Napoleon III., Emperor of the French, one hundred and thirty-seven dollars and forty-three cents for their costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court, with directions to enter a decree in conformity with the opinion of this court. (3 April, 1871.)

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this court as according to right and justice, and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and seventy.

Costs of claimants and appellants: Clerk, $117.43; attorney, $20.00—$137.43. Taxed by—

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

(Endorsed:) Filed 29th July, 1871. L. S. B. Sawyer, clerk.

5 At a stated term of the circuit court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Saturday, the 18th day of November, in the year of our Lord one thousand eight hundred and seventy-one:

Present, the Honorable Lorenzo Sawyer, judge.

Order of 18 *Nov. to enter decree for libel'ts in sum of* $7,500 *and costs.*

SHIP "SAPPHIRE," &C.
vs.
NAPOLEON III.

This cause having heretofore come on to be heard upon the mandate of the United States Supreme Court, and due consideration thereof having been had, it is ordered that a decree for libellants for the sum of seven thousand five hundred dollars and costs be filed and entered herein.

6 *Decree.*

UNITED STATES OF AMERICA,
District of California, ss:

Circuit court of the United States, for the ninth circuit.

At a stated term of the circuit court of the United States of America, for the district of California, held at the court-room, in the city of San Francisco, on the 27th day of November, in the year of our Lord, one thousand eight hundred and seventy-one.

Present, The Honorable Lorenzo Sawyer, circuit judge.

SHIP SAPPHIRE, G. C. TRUEFANT AND J. R. Tibbetts, claimants and appellants,
v.
EMPEROR OF THE FRENCH, NAPOLEON III., libellant and appellee.

On reading the mandate of the Supreme Court of the United States of America, issued in the above entitled cause, and heretofore, to wit, on the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and seventy-one, filed in this court, it is in
7 pursuance of said mandate hereby ordered, adjudged, and decreed, that the decree of the said circuit court of the United States in the above entitled cause, made and entered on the second day of July, in the year of our Lord, one thousand eight hundred and sixty-nine to the effect that the said libellant do have and recover from the claimants the sum of fifteen thousand dollars and their costs taxed in the court below, at one hundred and fifteen dollars and fifty cents, and also their costs to be taxed in said circuit court, be, and the same hereby is, pursuant to said mandate, in all things, reversed.

And it is further ordered, adjudged, and decreed, that the decree entered in the above entitled cause, in the district court of the United States, in and for the district of California, on the thirteenth day of January, in the year of our Lord one thousand eight hundred and sixty-nine, in favor of the said libellant and against the said claimants, be, and the same hereby is, in all things, reversed.

And it is further ordered, adjudged, and decreed, in pursuance of said mandate, that the said libellant do have and recover against the said ship Sapphire, her tackle, apparel and furniture, and the said claimants, the sum of seven thousand and five hundred dollars,
8 the same being one-half of the damages decreed by this court in favor of said libellant and against said claimants.

And it is further ordered, adjudged, and decreed, that said libellant also recover against the said ship Sapphire, her tackle, apparel, and furniture, their costs taxed in said district court at one hundred and fifteen dollars and fifty cents, together with their costs taxed in this court, in the sum of two hundred and ninety-nine dollars and seventy cents, amounting in all to the sum of four hundred and fifteen dollars and twenty cents, less the sum of one hundred and thirty-seven dollars and forty-three cents, for the costs of the said appellants expended in the prosecution of their appeal to the said Supreme Court of the United States.

And it is further ordered, adjudged, and decreed, that a summary judgment be, and the same hereby is, entered against G. C. Truefant and J. R. Tibbetts, the principals, and Henry B. Williams and Henry P. Blanchard, the sureties, on the bond filed for the release of said ship Sapphire, her tackel, apparel, and furniture, for the sum of seven thousand and five hundred dollars, and for the sum of two hundred and seventy-seven dollars and seventy-seven cents costs, and that the libellant and appellee do have execution therefrom.

LORENZO SAWYER,
Circuit Judge.

9 (Endorsed:) Filed & entered 27th Nov., 1871. L. S. B. Sawyer, clerk.

(Endorsed:) Enrolled papers. Filed Dec. 7, 1871. L. S. B. Sawyer, clerk, by J. F. O'Beirne, D. C.

10 *Notice of motion to set aside order of 18th November.*

UNITED STATES OF AMERICA,
Circuit Court of the United States, District of California, ss:

THE SHIP "SAPPHIRE," etc., Truefant et al., claimants and appellants,
vs.
NAPOLEON III, EMPEROR OF THE FRENCH, libellant and appellee.
} In admiralty.

GENTLEMEN: You will please take notice that, on Saturday, the 25th day of November instant, at the opening of said circuit court, on that day, or so soon thereafter as counsel can be heard, I shall move said court at the court-room thereof, in the city and county of San Francisco, that the order of said court heretofore entered, to wit, on the 18th day of November instant, that a decree be entered in favor of the libellant for $7,500 with costs, be set aside, and that in lieu thereof an order be entered that libellant have a decree for 8,237.00 and costs, and that
11 said motion will be founded on the papers on file in said case in said circuit court.

MILTON ANDROS,
Proctor for Appellee.

Messrs. MCALLISTER AND BERGIN,
Proctors for Appellants.

Service of a copy of the within notice is hereby acknowledged this 20th day of Nov., 1871.
(Endorsed:) Filed Nov. 20th, 1871. L. S. B. Sawyer, cl'k. By J. F. O'Beirne, D. C.

12 At a stated term of the circuit court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Monday, 27th day of November, in the year of our Lord one thousand eight hundred and seventy-one.
Present, the Honorable Lorenzo Sawyer, judge.

Order denying motion to set aside order granting decree.

SHIP SAPPHIRE, &C.,
vs.
NAPOLEON III.

This cause coming on this day to be heard, upon a motion to set aside the order heretofore made and entered in this cause on the 18th day of November, A. D. 1871, T. I. Bergin, esq., appearing for appellant, and M. Andros, esq., for appellee, after arguments of counsel and due consideration by the court, ordered said motion denied.

13 *Notice of appeal.*

In the circuit court of the United States for the ninth circuit district of California.

THE SHIP "SAPPHIRE," &C., ET AL., appellants and claimants,
vs.
NAPOLEON III, &C., APPELLEE AND LIBELLANT.

Please take notice that the appellants and claimants herein intend to

appeal from the final decree of this court, entered in this cause on the 27th day of November, A. D. 1871.

Dated December 7th, 1871.

McALLISTER & BERGIN,
Proctors for Appellants.

To GEORGE F. and W. H. SHARP, and M. ANDROS,
Proctors for Appellee.

(Endorsed:) Service of the within notice is hereby admitted this 7th December, 1871.

M. ANDROS.

Filed 7th Dec., 1871. L. S. B. Sawyer, clerk.

14 *Appeal.*

In the Supreme Court of the United States.

THE SHIP "SAPPHIRE," &C., G. C. TRUEFANT and J. R. Tibbitts, claimants and appellants,
vs.
NAPOLEON III. &C, LIBELLANT AND APPELLEE.

To the honorable the Supreme Court of the United States:

The appeal of G. C. Truefant and J. R. Tibbetts, above named claimants and appellants, respectfully showeth that, on the 24th day of December, A. D. 1867, the above-named libellant, Napoleon III., the Emperor of the French, filed his libel in the district court of the United States for the district of California against the ship "Sapphire," her tackle, apparel, &c., in a cause, civil and maritime, for the recovery of damages alleged to have been sustained by him to the French
15 transport "Euryale," by collision with the said ship "Sapphire" in the Bay of San Francisco, and that the said ship "Sapphire" was arrested upon process issued upon said libel, and was discharged, on your petitioners filing their claim and entering into stipulations; and your petitioners thereupon filed their answer to said libel, and such proceedings were had in the said cause that, on the nineteenth day of May, A. D. 1868, a decree was made and pronounced therein by the said district court, whereby it was, among other things sentenced and decreed that the libellant in said cause recover against these appellants his damages caused by the collision set forth in said libel, as by reference to said decree may more fully appear, under which decree a reference was had to a commissioner who reported the amount of said damages, which said report was confirmed, and upon the 13th day of January, A. D. 1869, a final decree of said district court was entered herein, fixing said damages, and awarding the same to libellant at the sum of fifteen thousand dollars, together with costs.

And that after such final decree your petitioners duly appealed therefrom to the circuit court of the United States for the ninth circuit in and for the district of California, and the said cause was removed
16 thereby into the said circuit court, and there tried anew; and such proceedings were had in the said circuit court; that, afterwards, on the 2nd day of July, A. D. 1869, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed, with costs, and that the said appellee have execution therefor.

And that after such final decree your petitioners duly appealed therefrom to the Supreme Court of the United States, and the said cause was removed thereby into the said Supreme Court, and such proceedings were had therein that said Supreme Court, on the 3rd day of April, A. D. 1871, issued its mandate, wherein it ordered, adjudged and decreed that the decree of said circuit court be reversed with costs, and that the said claimants and appellants recover against the said libellant, and appellee, Napoleon III, Emperor of the French, one hundred and thirty-seven dollars and forty-three cents, their costs, and that this cause be remanded to said circuit court, with directions to enter a decree in conformity with the opinion of said Supreme Court.

17 And that after the filing of said mandate in said circuit court, and on the 27th day of November, A. D. 1871, said circuit court entered a final decree in this cause, whereby it was decreed that said libellant and appellee recover against said claimants and appellants the sum of seven thousand five hundred dollars, together with the sum of two hundred and seventy-seven $\frac{77}{100}$ dollars costs; which said decree of the said circuit court is, as these appellants are advised, erroneous and ought to be reversed.

Wherefore these appellants appeal from the whole of said decree entered in said circuit court on the 27th day of November, A. D. 1871, to the Supreme Court of the United States, and respectfully pray that the said last-named decree of the said circuit court and the libel, answer, pleadings, depositions, evidence and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause, and that said last-named decree of the circuit court and every part thereof may be reversed, and such other decree be made herein as to the said Supreme Court shall seem just.

Dated San Francisco, December 24, 1871.

McALLISTER & BERGIN,
Proctors for Appellants.
HALL McALLISTER,
Proctor for Appellants.

18 I hereby allow above appeal.
San Francisco, Dec. 26th, 1871.

LORENZO SAWYER,
Circuit Judge.

Service of a copy of within appeal upon me this day hereby admitted. Dec. 26, 1871.

MILTON ANDROS,
Proctor for Appellee.

19 *Stipulation.*

In the circuit court of the United States for the ninth circuit, district of California.

SHIP "SAPPHIRE, &C., ET AL., APPELLANTS and claimants,
vs.
NAPOLEON III, &C., APPELLEE AND LIBELLANT.

It is hereby stipulated and agreed by and between the parties hereto that the printed transcript on the former appeal in this case, now on file

in the office of the clerk of the Supreme Court of the United States, together with a duly certified copy of the proceedings had herein since the filing of said transcript, shall constitute the transcript upon the present appeal in this case, and that said printed transcript shall be read and used by either party, upon the hearing of this appeal, with the same force and effect as if the same had been incorporated in the present transcript on appeal. It is further stipulated that the appeal herein has been perfected in due time.

Dated December 26th, 1871.

MILTON ANDROS,
For Appellee.
McALLISTER & BERGIN,
For Appellants.

20 (Endorsed:) Filed Dec. 26, 1871. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, D. C.

21 *Bond on appeal.*

Circuit court of the U. S. of America for the 9th circuit in and for the district of California.

THE SHIP "SAPPHIRE," &c., G. C. TRUEFANT and J. R. Tibbetts, claimants and appellants,
vs.
NAPOLEON III, &c., LIBELLANT AND APPELLEE.

Know all men by these presents that we, G. C. Truefant and J. R. Tibbitts, and M. P. Jones and S. B. Boswell, of the city and county of San Francisco, State of California, are held and firmly bound unto the above-named Napoleon III, Emperor of the French, in the sum of sixteen thousand dollars, to be paid to the said appellee; for the payment of which, well and truly be made, we bind ourselves and each of us, our, and each of our, heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the 21st day of December, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas the above-named appellants have prosecuted an ap-
22 peal to the Supreme Court of the United States, at the city of Was'ington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the ninth circuit, in and for the district of California, on the 27th day of November, A. D. 1871:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

G. C. TRUEFANT, [SEAL.]
By his att'y, H. B. WILLIAMS.
J. R. TIBBETTS, [SEAL.]
By his att'y, H. B. WILLIAMS.
M. P. JONES. [SEAL.]
S. B. BOSWELL. [SEAL.]

Sealed and delivered, and taken and acknowledged this day of December, 1871, before me.

UNITED STATES OF AMERICA,
District of California, ss:

M. P. Jones and S. B. Boswell, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of sixteen thousand dollars over and above all his just debts and liabilities.

M. P. JONES.
23 S. B. BOSWELL.

Sworn to this 21st day of December, A. D. 1871, before me.
[SEAL.] E. V. JOICE,
Notary Public.

I approve the above bond and the sufficiency of the sureties.
December 26th, 1871.

MILTON ANDROS,
For Appellee.

(Endorsed:) Filed Dec. 26, 1871. L. S. B. Sawyer, cl'k, by J. F. O'Beirne, D. C.

24 UNITED STATES OF AMERICA,
District of California, ss:

I, Lorenzo S. B. Sawyer, clerk of the United States circuit court for the district of California, in the 9th circuit, do hereby certify that the foregoing papers, attached together, are true and exact copies of their respective originals now on file and remaining of record in my office. I further certify that the same constitute the record of all the proceedings had in this cause since the filing of the transcript in the United States Supreme Court on the former appeal of this cause to said court.

Witness my hand and the seal of said circuit court, this 9th day of January, A. D. 1872.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *D. C.*

25 *Libel.—Apostles.*

In the district court of the United States in and for the northern district of California.

THE EMPEROR OF THE FRENCH, NAPOLEON III,
Emperor of the French, libellant,
vs.
THE SHIP SAPPHIRE.

To the Hon. Ogden Hoffman, judge of the district court of the United States in and for the northern district of California:

The libel of the Emperor of the French, Napoleon III, Emperor of the French, owner of the French transport Euryale, against the ship Sapphire, her tackle, boats, apparel, furniture, and cargo, and against all persons lawfully intervening for their interest, in a cause of collision, civil and maritime, alleges as follows:

First. That your libellant, before and at the time hereinafter mentioned, and now is the sole and exclusive owner of the French transport Euryale, her tackle, boats, apparel, and furniture.

Second. That said transport Euryale also is a national vessel be-

longing to and in the employ of the imperial government of France, and is a valuable vessel, and built at great cost, and was at the time herein referred to, with her tackle, apparel, boats, and furniture, worth the sum of $60,000.00.

Third. That on Sunday the 22d day of Dec'r, 1867, and prior thereto, the said transport Euryale, with her tackle, apparel, and furniture, was safely moored in the harbor of San Francisco, where she had a perfect right to be, the said vessel being then, and also at the time when she was run into as hereinafter mentioned, tight, staunch, and strong, and in every respect well manned, tackled, apparelled, and appointed, and having the usual and necessary complement of officers and men; that, on Sunday, on the 22d of Dec'r, 1867, watch was set on deck said vessel, and proper lights were fixed and so remained during the whole of the preceding night and morning of said day.

Fourth. That, during the evening and morning of said day, and while said Euryale was safely moored as aforesaid, the said ship Sapphire, a vessel of about fourteen hundred tons, and worth about the sum of $100,000.00, was lying in said harbor of San Francisco close to said Euryale, about three hundred yards southeast from her, off her larboard bow, both vessels riding with their heads to the southeast with the same swing; that about two o'clock in the morning of said day the Sapphire was noticed to be dragging her anchors; that about fifty minutes past four o'clock on said morning she struck the Euryale on the starboard side with a very violent shock—the wind was blowing heavily from the southeast—and she continued to strike the Euryale with great force and violence, and said Euryale being a vessel of only about four hundred and fifty tons, and in ballast, those on board became apprehensive that she would be sunk; that while in said collision the spars and rigging of both said vessels became entangled; that the bowsprit of the Euryale was broken off close to the bows, and carried away, with all its rigging, the starboard spare anchor wrenched from its support and fastenings, and carried overboard, the foremast broken and carried away flush to the deck, breaking its spars, and crush-
26 ing the cook-house, the maintop gallant-mast, and maintopmast broken, and the head of the lower mast sprung, two boats crushed on the davits, and carried overboard, together with their apparel, the rigging of the mizzenmast cut, and the gaff broken, a portion of the sheathing torn off, and one of the beams in the lower deck broken, and the upper portion of the hull on the starboard side injured. Such are the serious damages so far as can be ascertained at present without a survey.

Fifth. That the said ship Sapphire at said time had not a proper look-out and watch to guard against the danger of said collision; that she was not then properly manned and fitted, and had not on board the necessary complement of officers and men to meet such emergency, and that the collision aforesaid was occasioned wholly by the negligence, and inattention, and want of proper care and skill, on the part of the said ship Sapphire, her master and crew, and not from any fault, omission, or neglect on the part of the said Euryale, her master and crew.

Sixth. That the collision would not have occurred if the ship Sapphire's cables had been properly adjusted to meet the strength of the wind and sea; that the master and crew of the Euryale did everything in their power to avoid the collision, and that after the said ship Sapphire had struck the Euryale, they attempted to get clear of the said ship Sapphire without being able so to do; that the master of the said Euryale then at once sent for the steam-tug , which came to

her assistance and hauled the Euryale clear from the said ship Sapphire, for which services the libellant will be obliged to pay, the amount of which the libellant is at present unable to state, which said service, labor, and damages and expenses were occasioned by the negligence, want of skill, and improper conduct of the persons on board the ship Sapphire, and not through any fault, negligence, or improper conduct on the part of the persons on board of the Euryale, her master and crew.

Seventh. That for such injuries so received from such collision and expense which the master of the said Euryale has been put to on account thereof, this libellant is entitled to receive the sum of $15,000.00.

Eight. That the said ship Sapphire, her tackle, &c., are now in the port of San Francisco, and within the admiralty and maritime jurisdiction of this honorable court.

Ninth. That all and singular the premises are true.

Wherefore libellant prays that process, in due form of law and according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, boats, furniture, and cargo, and that all persons claiming an interest therein may be cited to appear and answer upon oath all and singular the matters aforesaid, and that the honorable court will be pleased to decree to libellants the sum of $15,000.00 for the damages received by said Euryale, and that the said ship Sapphire, her tackle, apparel, boats, furniture, and cargo, may be condemned, and that the libellant may have such other and further relief as in law and justice they may be entitled to receive.

G. F. & W. H. SHARP,
Proctors for Libellant.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Captain Auguste Parrayon, being duly sworn, deposes and says
27 that he is the master of the said ship Euryale; that he has read the foregoing libel; knows the contents thereof; that the same is true of his own knowledge except as to these matters which are therein stated on his information or belief; and that as to those matters that he believes it to be true.

A. PARRAYON.

Subscribed and sworn to before me, this 24th day of Dec., 1867.
A. D. SMITH, *U. S. Com.*

(Endorsed:) Filed Dec. 24th, 1867.
GEO. E. WHITNEY, *Clerk*,
P'r A. D. SMITH, *D. C.*

Stipulation for costs, (libellants'.)

UNITED STATES OF AMERICA:
District court of the United States for the district of California.

Whereas a libel was filed in this court, on the 24th day of Dec'r, in the year of our Lord one thousand eight hundred and sixty-seven, by the Emperor of the French against the ship Sapphire, her tackle, &c., &c., for reasons and causes in the said libel mentioned, and the said Emperor of the French, and Eugene Dubedat and Alphonso Bourgowig his sureties, parties hereto, hereby consenting and agreeing that, in case of default or contumacy on the part of the said libellant, or his sureties,

execution may issue against their goods, chattels, and lands for the sum of five hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the libellant above named shall pay all costs and charges that may be awarded against them in any decree by this court or, in case of appeal, by the appellate court.

E. DUBEDAT.
A. BOURGOWIG.

Taken and acknowledged this 24th day of December, 1867, before me.
A. D. SMITH, *U. S. Commissioner.*

DISTRICT OF CALIFORNIA, *ss:*

Eugene Dubedat and Alphonso Burgowig, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his debts and liabilities.

E. DUBEDAT.
A. BOURGOWIG.

Sworn to this 24th day of Dec'r, 1867, before me.
A. D. SMITH, *U. S. Commissioner.*

Filed the 24th day of Dec'r, 1867.

GEO. E. WHITNEY, *Clerk.*
P'r A. D. SMITH.

28 *Claim.*

In the district court of the United States for the northern district of California,

NAPOLEON III, EMPEROR, &c.,
vs.
SHIP SAPPHIRE, &c.

To the Honorable Ogden Hoffman, judge of the district court of the United States for the northern district of California:

G. C. Truefant and J. R. Tebbetts, owners of the ship Sapphire, her tackle, apparel, and furniture, above mentioned, intervening for their interests in the said ship Sapphire, her tackle, apparel, and furniture, appear before this honorable court, by A. P. Boyd, the master of the said ship, their duly authorized agent, and claim the said ship Sapphire, &c., and state that they are the true and bona-fide owners thereof, and that no other person is the owner thereof.

And therefore the said claimants pray that this honorable court will be pleased to decree a restitution of the same to them, and otherwise right and justice to administer in the premises.

San Francisco, Dec'r 26th, 1867.

TRUEFANT & TIBBETTS,
By A. P. BOYD.

H. & C. MCALLISTER,
Proctor for Cl'm't.

(Endorsed:) Filed Dec'r 27th, 1867.

GEO. E. WHITNEY, *Clerk.*
By A. D. SMITH, *D. C.*

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

A. P. Boyd, being duly sworn, deposes and says that he is the master of said ship and the agent of the claimants above named; that he is duly authorized to interpose this claim in their behalf; that he has read the foregoing claim, and knows the contents thereof; that the same is true, of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters that he believes it to be true.

A. P. BOYD.

Sworn to and subscribed before me, this 27th day of Dec'r, A. D. 1867.

A. D. SMITH, *U. S. Com'r.*

Stipulation for costs, (claimants'.)

UNITED STATES OF AMERICA:

District court of the United States for the district of California.

Whereas a libel was filed in this court on the 24th day of Dec'r, in the year of our Lord one thousand and sixty-seven, by the Emperor of the French against the ship Sapphire, her tackle, &c., for reasons and causes in the said libel mentioned; and whereas [and the said] 29 G. C. Truefant et al., and H. B. Williams and H. P. Blanchard, his sureties, parties hereto, hereby consenting and agreeing that, in case of default or contumacy on the part of the said claimants or his sureties, execution may issue against their goods, chattels, and lands for the sum of five hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the claimants above named shall pay all costs and charges that may be awarded against them in any decree by this court or, in case of appeal, by the appellate court.

A. P. BOYD.
H. B. WILLIAMS.
H. P. BLANCHARD.

Taken and acknowledged this 27th day of Dec'r, 1867, before me.

A. D. SMITH, *U. S. Com'r.*

DISTRICT OF CALIFORNIA, *ss:*

H. B. Williams and H. P. Blanchard, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his debts and liabilities.

H. P. BLANCHARD.
H. B. WILLIAMS.

Sworn to this 27th day of Dec'r, 1867, before me.

A. D. SMITH,
United States Commissioner.

Filed the 27 day of Dec'r, 1867.

A. D. SMITH, *Dep. Clerk.*

Monition.

DISTRICT OF CALIFORNIA, *ss:*

The President of the United States of America to the marshal of the United States for the district of California, greeting:

SEAL OF U. S. DIST. COURT, NORTH'N DIST. OF CAL.

Whereas a libel hath been filed in the district court of the United States for the district of California, on the 24th day of December, in the year of our Lord one thousand eight hundred and sixty-seven, by the Emperor of the French, Napoleon III, Emperor of the French, against the ship Sapphire, her tackle and furniture, &c., &c., in a cause of damages, civil and maritime, for the reasons and causes in the said libel mentioned, and praying the usual process and mo'tion of the said court in that behalf. to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and, all proceedings being had, that the said ship or vessel, her tackle, &c., may, for the cause in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said ship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the district of California, on the 7th day of January, 1868, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations on that behalf. And what you shall have done in the premises, do you then and there make return thereof together with this writ.

Witness the Honorable Ogden Hoffman, judge of said court, at the city of San Francisco, in the district of California, this 24th day of December, in the year of our Lord one thousand eight hundred and sixty-seven, and of our Independence the ninety-second.

GEO. E. WHITNEY, *Clerk.*
By A. D. SMITH, *Deputy Clerk.*

G. F. W. H. SHARP,
Proctors for Libellant.

(Endorsed:) Mon'tion returnable Jan'y 7th, 1868. Issued Dec'r 24th, 1867. Filed Jan'y 7th, 1868:

GEO. E. WHITNEY, *Clerk,*
By S. NEAL, *Deputy Clk.*

Order.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Tuesday, the seventh day of January, in the year of our Lord one thousand eight hundred and sixty-eight.

Present, the Honorable Ogden Hoffman, judge.

THE EMPEROR OF THE FRENCH
vs.
SHIP SAPPHIRE, ETC.

And now, at this day, on motion of proctor for libellant herein, ordered

that monition returnable this day be filed, and proclimation be made; which is accordingly done.

On like motion, ordered that a default be entered against all persons not in court.

On motion of McAllister, proctor claimants herein, leave given to answer within five days.

Answer.

In the district court of the United States for the district of California

THE EMPEROR OF THE FRENCH, NAPOLEON III,
vs.
THE SHIP SAPPHIRE, &C., TRUEFANT AND Tibbets, claimants.

To the Honorable Ogden Hoffman, judge of the district court of the United States for the district of California:

The answer of Truefant and Tibbets, of Boston, Massachusetts,

31 intervening for their interest in the ship Sapphire, her tackle, apparel, and furniture, to the libel of the Emperor of the French, Napoleon III, answers and alleges as follows:

First. That claimants are ignorant of the matters set forth in the first article of said libel, and therefore deny the same, and pray that libellant may be put to the strict proof thereof.

Second. That claimants are ignorant of the matters set forth in the second article of said libel, and therefore deny the same, and pray that libellant may be put to the strict proof thereof.

Third. That the matters contained in the third article of said libel are in a great part falsely alleged, and therefore claimants deny the same, and allege the truth to be as is hereinafter set forth.

Fourth. That the matters contained in the fourth article of said libel are in a great part falsely alleged, and therefore claimants deny the same, and allege the truth to be as is hereinafter set forth.

Fifth. That the matters contained in the fifth article of said libel are falsely alleged, and claimants deny the same, and allege the truth to be as is hereinafter set forth.

Sixth. That the matters contained in the sixth article of said libel are falsely alleged, and claimants deny the same, and allege the truth to be as is hereinafter set forth.

Seventh. That claimants are ignorant of the matters set forth in the seventh article of said libel, and therefore deny the same, and pray the libellant may be put to strict proof thereof.

Eight. That claimants admit the matters set forth in the eight article of said libel.

Ninth. But claimants allege the truth and fact to be that, at the dates set forth in the libel, the said ship "Sapphire" and the said transport Euryale, mentioned in the libel on file herein, were both anchored off the port of San Francisco, about three hundred yards distant from each other, the said ship Sapphire being moored in a southeasterly direction from the said transport "Euryale;" that, during the evening of the 22d and the morning of the 23d day of December, A. D. 1867, a southeasterly gale of unusual violence and duration occurred; that at that time the said ship "Sapphire was loaded ready for sea, and had been towed into the stream prior to her departure for Liverpool.

That at said dates she had her full complement of men and officers on board, and was fully and properly manned and equipped; and that, during the whole of said gale, and until the occur'ence of the collision alleged in said libel, all the officers and crew of said ship "Sapphire" were on deck ready to adopt and use any and all measures to prevent any danger or accident happening to said ship "Sapphire."

That said ship "Sapphire" swung at her anchor during said time, without dragging at all; and that between four and five o'clock on the morning of the 23rd day of December, A. D. 1867, the said transport "Euryale" ran into and collided with the said ship Sapphire, without any fault or negligence on the part of the officers or any of them, or the crew or any of them, of said ship "Sapphire."

That whatever damage was done to the said transport "Euryale" or said ship "Sapphire" occur'ed, and was occasioned solely and exclusively, by reason of the fault and negligence of the officers of said transport "Euryale."

Tenth. That all and singular the premises are true.

Wherefore claimants pray that this honorable court would be
32 pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise law and justice to administer in the premises.

H. & C. McALLISTER,
Proctors for Cl'm'ts.

Subscribed and sworn to before me this day of February, A. D. 1868.

The verification of the foregoing answer is hereby waived.

Dated this 18th February, A. D. 1868.

G. F. & W. H. SHARP,
Att'y for Pl'ff.

(Endorsed:) Filed Feb'y 20th, 1868.

GEO. E. WHITNEY, *Cl'k*,
By S. NEAL, *D. C.*

Order.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Thursday, the nineteenth day of March, in the year of our Lord one thousand eight hundred and sixty-eight.

Present, the Honorable Ogden Hoffman, judge.

THE EMPEROR OF THE FRENCH
vs.
SHIP SAPPHIRE.

The hearing of the cause is now proceeded with, having heretofore been specially set for this day, Messrs Sharp and Andros appearing on behalf of libellants, and Cuttler McAllister, esqr., on behalf of claimants.

C. H. Harrison, Aug'e Parrayon, Joseph Le Noir, and John Deveaux were sworn and examined as witnesses on behalf of the libellants; and the further hearing of this cause was postponded till to-morrow, 11 o'clock a. m.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Friday, the twentieth day of March, in the year of our Lord one thousand eight hundred and sixty-eight.

Present, the Honorable Ogden Hoffman, judge.

THE EMPEROR OF THE FRENCH
vs.
SAPPHIRE, ETC., ETC.

The hearing of this cause is now continued from yesterday. Paul Brazier and A. C. Frées were sworn and examined as witnesses on behalf of the libellants, and the further hearing of this cause was continued to Saturday, 21st.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Saturday, the twenty-first day of March, in the year of our Lord one thousand eight hundred and sixty-eight.

Present, the Honorable Ogden Hoffman, judge.

33 THE EMPEROR OF THE FRENCH
vs.
SAPPHIRE, ETC., ETC.

The hearing of this cause is now continued from yesterday. C. Goodhaw, C. E. McNear, W. F. Peck, E. Mayo, M. Noyce, L. L. Batchelor, and E. R. Warshaw were sworn and examined on behalf of claimants. On motion, cause is now submitted on briefs.

Notes of testimony.

THE EMPEROR OF THE FRENCH
vs.
THE SHIP SAPPHIRE. } Collision.

C. H. HARRISON.

Am Mare Island pilot; for 17 years. I know the Euryale. Took her to Mare Island in December, shortly before Christmas. Took her to her anchorage off Pacific-st. wharf. Saw her daily after that; she was about 600 yards from the end of the wharf. She had 45 fathoms chain; the shackle just beyond the bitts. The Sapphire was not anchored there at that time. Saw the vessel immediately after collision. Saw her just as she got clear of the ship and was being towed down to North Beach. I had been particular in anchoring the "Euryale;" her mizzenmast on the ebb-tide lined with the middle of Pacific st. After the collision I found the "Sapphire" lying with her foremast in exactly the same position on the ebb-tide. This was in the morning after collision. She lay there some days. She then had to move to enable the "Euryale" to recover her anchors, which were right under the "Sapphire." It blew harder the next day than on the night of collision. The Euryale was ready for sea. The Sapphire was also ready for sea. The Euryale had about 45 fathoms in the water.

Cross-examined:

Did not notice the relative positions of the vessels before the collision. The Euryale drew either 13 or 15 f't.

AUGUST PARYON:

I am lieut. of French navy, commanding the Euryale. She is a French national vessel. Have commanded her 15 months. I returned from Mare Island on the 14th Dec. I had been thoroughly repaired. She was anchored by Capt. Harrison about 6 or 700 yards. I can give more readily the weight, because I was obliged to replace one which I had lost. The one I bought weighed 2,500; the one I lost weighed 1,015 lbs. more; my chain 4¼. My port-anchor was down on the night of the collision; 56 fathoms the bitts the last time I was on board. I quitted at 4 o'c'k on Saturday, the barometer being very high; the weather cloudy; light wind from S. E.

The vessel had not changed her anchorage at all. I was called on Sunday. I heard a knock at my door. My first impression was that the "Sapphire" was afoul of us. I had usually seen my ship from Pacific st., except the bowsprit. When I went down on the morning of the collision the Sapphire was in her place. This diagram was made by myself; it shows the position of the vessels before the collision. When I arrived at the quai the Sapphire was in the place where the Eury-
34 ale had been anchored—a little to the northward of it. At that moment all the vessels headed to the wind, especially the Sapphire. When I arrived at the wharf the Euryale was already going towards Alcatraz, in tow of a steamer. Capt. Boyd gave me an account of this accident. I remember it literally. I was breakfasting with Mr. Dubedat. Capt. Boyd came to see me. He said it was very unlucky for him that the "Euryale" had fallen on him; but that he would not bring any suit against her. I then remarked to him, "Captain, you are a sailor, perhaps better than myself; but you forget that I am one; that I was anchored to leeward of you, and that, with a S. E. wind, I could"—— The captain replied, "That is true. It is I who got afoul of you; it was not my fault, it was the fault of the weather;" and that if I should commence suit against him he would be discharged by his owners; that he was very unhappy.

Mr. Dubedat was present at all the conversation. He proposed, on my part, to go before the consul; that he should there repeat what he had just said, and the matter could be arranged readily; that as I had more strict account to give to my government than he had to his owners, that if he would not go before a consul I should be obliged to sue him before the American tribunal. It was my only means of justification. Capt. Boyd immediately saying, "I'll see about it." I have not seen him since.

My total reparation amounts to 14,000 and some odd dollars.

Cross-examination:

My ship is in exactly the same condition as before, except my masts are now new while the former ones were five years old. I have replaced some of the rigging which could not be used. I made the repairs with as much economy as possible. I made a new bowsprit out of my old mainmast. I diminished the size of my tops rather than make new ones, as the old could be made to do. No charge is made for dry-dock. I left my 2nd in charge. The distance between the "Sapphire" and Euryale was between 2 and 3 hundred yards. The Euryale was nearest the wharf. This diagram correctly indicates the position of the vessels before collision. Their position after the collision I derived from my 2nd. We drew 13 feet. I am sure that with the weight of my anchors I should have been perfectly safe. We had about ½ of our cargo to take on board.

J. LE NOIR:

I am 3rd officer on board the "Euryale;" have charge of chronometers; have been in the ship 4 years. I was on duty at the moment of collision; the collision occurred at 10 minutes after 5 o'clock. The wind became very strong about 2½ o'clock.

It was very violent at the moment of the collision. It was also raining very hard when I last noticed the Sapphire; it was about 3 o'clock. After that the weather became so thick that I could not see her. At 2½ I was informed by another officer that the wind was freshening. About half an hour after I was told by the chief that the "Sapphire" was approaching us. I came on deck and saw that she had come nearer. I asked the man whether the "Sapphire" had paied out chain. He said yes, they had given her chain. I said it was *then*, not supposing that she had come nearer. I ordered the man to look out for the boats and ladders over the side. I then went below. About 20 minutes after the same man came to tell me that the "Sapphire" had
35 dropped her 2nd anchor, I said I was very glad, as she would not come toward us any more. I next came on deck at 5 o'clock. The "Sapphire" was coming down on us. The weather was very bad. 2 or 3 minutes before collision I ordered the jib hauled. The "Sapphire" had not yet touched us. She was on our starboard side, and, as she had the wind aft, I thought I might have time to hoist my jib and haul the sheet to starboard, to make the vessel take a sheer starboard. The "Sapphire" would not have touched if her anchor had not *kooked* in our chain. She would have passed to starboard.

The "Sapphire" struck about the middle of the main-rigging. Her starboard bow struck us. We were struck on the starboard side. When I hoisted the jib our vessel did not sheer. My object was to give the "Sapphire" a wider berth. The anchor fouled with our chain almost at the same moment. I think we would have avoided collision if the anchor had not fouled. The effect of her anchor catching our chain was to bring the "Sapphire" astern of us and prevent us from getting away. We had 54 fathoms of chain out; 56 at the bitts. From the time I went on deck first to moment of collision the Euryale had not changed her position. I ordered the jib hoisted the moment I came on deck.

The "Sapphire" was about 30 fathoms off, advancing towards the Euryale; had a light on the flag-staff of bowsprit. It was a white light. (Admitted that "Euryale" had lights.) We could have held with the anchors we had with very much less than 56 fathoms chain. We had starboard anchor out. I had remarked the "Sapphire" distant about 120 fathoms (she outside and a little on our port bow) when we tailed down.

She had anchored there on the 17th, 3 or 4 days after us. The "Cleopatra" was astern of us, a little further off than the "Sapphire."

The diagram represents the respective position of the vessels.

We were taken in tow about 2 hours after collision; have not seen "Sapphire" since.

Cross-examined:

I was the officer of the deck on that night. I had under me the chief of division, a petty officer. The tonnage of our vessel is 450 tons; 7 or 8 men composed watch. Our whole crew consists of 42 men, all hands included. Three divisions were on duty—one from 11 to 12, one from 2 to 5, and at reveillee all hands turned out. The chief of division from 11 to 12 was Anfetto; from 2 to 5 was Deveau. The watch on

duty was the only one on deck. I did not give my anchor more chain at any time during that night. Up to 3 the vessel headed to S. E. The "Sapphire" headed in the same. The flood was just making. The wind had begun to be very strong. The "Sapphire" had one light in her starboard fore-rigging. The vessels had been heading in the same way all the night. When I came on deck I took a turn all around the vessel. The weather was fully clear. The "Sapphire" seemed to have got nearer to us, but I could not judge how much nearer. I should say she had paid out more chain and thus come nearer, according to the report of my chief. I could see her hull. About this time the weather became squally; could only see her lights. The squalls lasted 8 or ten minutes. This weather lasted until 7 in the morning, and indeed all day. I remained on deck about 10 minutes. I had been below about 10 or 15 minutes when the chief reported that "Sapphire" had let go her 2nd anchor. The steps and boats were on starboard side. I
36 ordered the man to look after them, to hoist them up higher if sea increased. When I went below the "Sapphire" was about 11′ on our port bow; at 5 she was in same position as when I went below; at 3 heading to S. E. The flood commenced running about 3 o'clock. I am certain we had not changed our position since 3 o'clock. When I came on deck at 5 o'clock the "Sapphire" was heading N. N.W. We headed them S. E. Her bows were about opposite our starboard main rigging. She was then 30 feet off. I hoisted my jib to sheer my bows to port and let her pass by. She would have done so if she had not caught our chain. She came between us and the town.

The "Sapphire" had come down with the wind and against the current. Her starboard bow struck us on our starboard side just abaft the mainmast. I was on the top-gallant forecastle giving orders to hoist jib. It was very dark. The "Sapphire" carried away our spanker-gaff. I saw no one on the "Sapphire" for 7 or 8 minutes. No confusion on our ship. They called to us to haul down the jib. It was only up about a foot at the time. We had hoisted it about 6 feet. I gave the order to hoist jib about 7 minutes after 5.

It had not been hoisted up to the moment of collision; am sure that it had not been hoisted enough to effect the ship. I continued to hoist my jib two or three minutes. I' was raised about six feet, when the 2nd came on deck and ordered it lowered. I am sure that the jib was not then higher than 6 feet. The vessels were then in contact. I am sure that one vessel headed to the wind all the time. I had a compass in my room. If she had changed her position I should have gone on deck. I can swear that she headed S. E. all the night, as shown by the compass in my cabinet. The flood-tide had no effect—the wind was too strong. The "Sapphire" was deeper, and the current affected her more. As the wind was that might, a light vessel would head to the wind, and a loaded vessel might tail across tide. When the tug came we slipped our chain & bouyed it—let go the whole of the chain.

When the tug took us the "Sapphire" headed E.x N. E., & the "Euryale" W. or N. W.; can't be exact.

The captain's cabin is a house on deck. We had two boats on our davits. Cabin 6 or 7 f't high; galley also on deck.

J. J. DEVEAUX, chief of division:

Went on deck at 2 o'clock. Saw the "Sapphire" when I went on deck. She was in same position as she had been previously. At 2½ she changed her position. They gave her more chain about that time. I reported this to Mr. J. Jénon. He came on deck. At 3 o'c'k I made

another report. They were giving her more chain. She had two anchors out at 4 o'clock. They had given her more chain twice. At 2 o'clock the "Sapphire" was about three hundred f't off. At 4 o'clock she was some 120 feet nearer, (30 to 40 metres.) At 2 o'clock the weather was clear, but at 4 I could see her more distinctly. The weather was very thick. The "Euryale" had not changed her position between 2 & 4. I knew this by the shore-lights and the position of a vessel astern. I received from the chief whom I relieved, to keep a good lookout to see if ship dragged and changed her position; also to see if other ships dragged. At 2 o'c'k the "Euryale" headed to the wind. She did not change her position up to moment of collision. I saw the "Sapphire" approach. Mr. Le Noir came on deck 2 or 3 minutes before we were struck. We were struck near starboard main-chains by "Sapphire" starboard bow. The "Sapphire" came alongside and changed the position of the "Euryale." I relieved 37 Aufuttee. The jib was hoisted about 4 feet at the moment of collision. The order had been given two or 3 minutes before collision. Mr. Le Noir was on deck two or three minutes. The collision occurred a few seconds after. The jib was hoisted 3 & 4 feet. We ceased to hoist the jib the moment the vessel began to swing together; am certain that it was never higher than 3 or 4 feet.

Cross-examined.

I am a sailor of the 2nd class. Was chosen by the captain.

At 5 o'clock only the guard or watch was on deck. The wind was so strong that we could not hoist the jib with 8 men, which composed the watch. I had charge of the deck when Mr. Le Noir was below. I was looking out with two others; we were on the top-gallant forecastle. At 4 o'clock I made report that "Sapphire" was approaching. I made a report at 5, or a few minutes after 5. I made no report between 4 and a few minutes after 5.

I told Biveaux, who reported that they were about to breakfast, to report that the "Sapphire" was approaching. At 5 o'clock she was very near to us. Between 4 & 5 she did not change her position. From about ¼ of an hour after she dropped her 2nd anchor up to 5 minutes. At 4¼ the "Sapphire" was on our starboard beam; she remained there until a few minutes before 5, when I sent word to Mr. Le Noir. There was no change in "Euryale" position. During these ¾ of an hour the "Sapphire" was between us and city. Mr. Le Noir must have seen the vessels in that position. Bioux and Le Galle were on the lookout with me. We had only time to hoist jib. The "Sapphire" lay about 60 feet distant on our starboard beam during these ¾ths of an hour; gale blowing; sea very heavy.

Am positive I heard the persons on "Sapphire" pay out chain and let go 2nd anchor. Could not have been on the "Cleopatra."

Heard no one cry out on "Sapphire" as we came near.

PAUL BRAIZER:

I am 1st officer of "Euryale;" have held it one year. Was on deck from 10 to 11. I next came on deck a few minutes after the collision. I ordered the jib hauled down. The vessels were then in contact. The forepart of the "Sapphire" was on the ste*m* of the "Euryale;" vessels lying alongside of each other at that moment. The "Euryale" was heading towards the town, and to windward of the "Sapphire." The jib was hoisted about 6 or 7 feet; they had stopped hoisting when I gave the orders. We first had to make fast to the "Sapphire." My object was

to make them roll together. They refused this on board the "Sapphire." When I made this request my men went forward with hawsers and fenders. My men tried to throw hawsers on the "Sapphire," and they refused to receive it. I made this request as soon as the jib was lowered. As soon as I ordered the jib lowered I ordered the spanker hoisted. At this moment the spanker-gaff was broken, and the mizzen-rigging carried away. I could not therefore hoist spanker. I then told them to give the "Sapphire" more chain; they said they could not, because they had no more chain to give her. I' was then that I asked them to take a hawser, and they refused. The "Sapphire" then hoisted her mizzen-topsail. The "Sapphire" then began to drag astern. She rubbed along our starboard side, and finally came athwart our bow, breaking our bowsprit.

She remained in this position a minute or two; she then came
38 back alongside of us to her former position, and so remained until the arrival of the tug.

The "Euryale" not being able to do anything, as all her braces were carried away, the tug made fast to our stern and drew us apart.

When the tug came up we were heading to S. W. We had not budged from our anchorage. I know this because I could see the shore. The tug came up at about 6 or 6½.

I remarked the position of the "Sapphire;" the positions are correctly indicated by this diagram. About 250 metres or 125 fathoms. She lay to windward about a point or a point and ½ on our port bow. When I left the deck at 10½ we were heading S. E. The ordinary weight of anchor for a vessel of our size would be 800 rele., or 1,750 lbs. The anchor we had down weighed about 3,300 Americans lbs.

Cross-examination:

I was in bed at the moment of collision. I ran instantly on deck. The intention of the 3d officer was to sheer the vessel off and avoid the collision. If the "Sapphire" had not come so quick it might have succeeded, or even if she had not hooked in the chain of the Euryale. I think the diagram represents correctly the manner in which her anchor caught our chain. I think if the jib had been hoisted ½ an hour, provided the "Sapphire" had not hooked our chain.

If I had put my jib-sheet to starboard, I might have sheered to port the length of the chain. The vessels did not drag while in contact. The tide had no effect on our vessel. The vessels were in contact about an hour and a half. No report was made to me that the "Sapphire" was dragging on to us. I was in command of the ship. My object in making the vessel fast was to cause them to roll together. The "Sapphire" was 4½ higher out of the water than the "Euryale." When I came on deck the "Sapphire" was to leeward of the Euryale. They began to hoist the mizzen-topsail of "Sapphire." About 15 minutes afterwards the tug was sent for by a boat from the "Euryale," with some one from the "Sapphire." I was told it was the captain of the "Sapphire." He said he had neither boat nor men.

ANDREW CH. FRÉES:

Am stevedore and lighterman.

I took up the anchor of the "Euryale." I went down—found that the "Sapphire" in heaving in her chain had brought up the bight of the other chain.

The bight of the Euryale chain was over the fluke of the "Sapphire's" anchor. There were half a dozen turns.

The next morning being calmer, I went and got the anchor. When I

hove in the chain till within about 40 fathoms of the anchor, I found the "Sapphire's" port anchor fouled. I had a very heavy purchase. Had raised the Aquilla's anchors with it, (4,000 lbs.;) broke the purchase; the anchor had a pretty good hold. When I got the anchor of the "Euryale" is seemed to me in the same position. My opinion is that the "Sapphire's" starboard anchor fouled with the "Euryale's" chain; the starboard anchor of "Sapphire" was fouled with "Euryale's" chain about 50 fathoms from "Euryale's" anchor. Her port anchor was fouled about 20 fathoms from anchor. I think the "Sapphire" must have hung to this anchor. My opinion always was that the port anchor got
39 foul by dragging. She picked up the chain with her port anchor first and afterwards with her starboard. The "Sapphire" ought to draw 20 to 21 feet.

EUGENE DUBEDAT:

I was present at a conversation between Captain Boyd and captain of "Euryale." Captain Boyd, it was easy to see, came to see Parayon. He came to our table and the first thing he said was that the "Euryale" had come on to "Sapphire." Captain P. pointed out the position of the ships, and asked him if it was possible that the "Euryale" could have come on the "Sapphire." Captain Boyd admitted this. He said no, that it was not possible. He said it was was very unfortunate for him; that he would lose his position. Captain P. replied that it was still more unfortunate for him, because his future as a French officer depended on this accident. We went out, and as I saw that Captain P. did not want a law-suit, I asked Captain P. if this ought not to be taken as an overture on the part of Captain B. I then took Captain B. aside and told him we were going to sue him, but it concerned a government vesssel, he might arrange with the Frenenh consul, and that I thought it for his advantage to do so. He left me immediately, saying, "I'll see about it." This conversation occurred in about ½ an hour. It was in English.

ANDRÉ BIOUX:

Sailor on "Euryale." Was on watch the night of collision. I was on the topgallant forecastle. I was there from 2 to 5 o'clock. Was stationed on deck generally. Deveux and Le Galle were with me. Saw the "Sapphire's" light at 2 o'clock; can't say how far off. Between 4 and 5 I saw her with the wind astern and heading the current, coming towards the "Euryale." This was about 4½ o'clock; about 5 minutes before collision. I mean that she began to come towards the "Euryale." I heard them paying out chain on board the "Sapphire." I heard them doing this and also dropping a 2nd anchor at about 4 o'clock. I heard this myself. I then saw the "Sapphire" coming down on us with wind astern and heading current. I remarked nothing. She did not continue to approach us. I did not apprehend a collision until about 10 minutes before it occurred. Between the squalls the ship could be seen, but during the squalls could only see the light. The wind was very high; weather squally.

When collision occurred I was on port quarter; was alone. When we tried to hoist jib we could not do so; we were then ordered to take it down.

Cross-examined:

Commenced hoisting jib after collision 2 or 3 seconds. Mr. Le Noir ordered it hoisted as soon as he came on deck. I was in division of Deveraux. Our duty, to look around generally, to watch; one was to

observe, the others to observe the lights, and do what was necessary. About 2 o'clock she was about 2 points on our port bow. Don't know how the tide was. We headed to the wind. At 3 she was nearly dead ahead of us. The flood had commenced. The "Euryale" still headed to the wind. The "Sapphire" was heading a little more to the eastward; her port side toward us; her stern had swung to the flood a little. At 4 o'clock she was on our starboard side, heading bows on to our main rigging. At 4½ she was heading tide, with stern to the wind, heading towards main-rigging, can't say how far off. Between 4½ and 5 she continued to approach us gradually—not at all times; when she came in she came all at once. We did not strike the bell at 5 because the ship was coming on to us. Don't know whether it was struck at 4 o'clock. The collision occurred about 5 minutes before the *brandfat* I reported to Mr. Le Noir that the vessel was gradually nearing us; made this report between 4 and 5. I had charge of the watch between 4 and 5. Did not look at the clock very often. Was looking at the "Sapphire." The Euryale did not change her position at all durthe night; she headed to the wind always.

The 2nd anchor had no effect to stop "Sapphire" dragging. She was coming nearer, but we did not think she would come into us. After 2nd anchor was dropped did not come so fast.

Captain PARAYON:

When we have no more than 3 officers, each is on duty for 24 hours; what we call a "guard." When we have more than 3 officers, the officers have a watch of 4 hours each. The division consists of ¼th of the crew. There is no particular station for the look-out on a small ship like mine. I generally keep them over my cabin, as it is higher and they can keep a better look-out.

The chief de division is also charged to look out, and to keep the others on the alert. His duty is to report to officers of watch if anything occurs. From the Euryale's rails to water is 13 feet, measured amidships.

My cabin-roof is 2 or 3 feet higher.

McAllister reads deposition. Claimant's witnesses.

CHARLES GOODALL:

Have been harbor-master 3 years and ½. Pretty well acquainted with tides and currents. If wind were southeast and tide ebb, the "Sapphire" would drift right astern of vessels in position showed by diagram. She would come very near "Euryale," but go outside. If tide is flood and wind southeast, vessels sheer about a good deal. Have not very often seen a light vessel remain stationary; generally sheer about more or less. Light vessel more liable to sheer than deep vessel. Shouldn't think a light vessel would remain still with tide an hour old. It then begins to run pretty strong.

Cross-examined:

With a flood-tide, placed as these vessels, the "Sapphire" might touch the "Euryale," especially if water high in upper rivers; this would deflect this tide towards the wharfs. I don't know of any way in which the "Euryale" could have dragged her anchor and collided with "Sapphire," of latter remained at her anchorage without dragging. 250 yards

is usually considered a good berth. It would be better to let go a second anchor rather than to pay out more chain. December is a bad month.

E. McNEAR:

Am a seaman. Have been pilot here for one year. Am now a ship-broker. The heaviest ship would lie the most steady if wind from S. E. and tide flood. I think it impossible that a vessel could have remained all night in a S. E. gale heading to the same point of the compass. If vessels, situated as in this diagram, on a flood-tide and with S. E. gale, the bark would have been *acted* more than an hour before the other, because she is further in shore. I take her to be 50 yards nearer, and being light, would just feel the tide which begins to run on the surface. The vessels would veer about promiscuously. The fact that one chain was underneath ours shows that we could not have dragged over her chain.

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WILLIAM F. PECK:

Ship-master for 7 years. Command the "Shooting-Star." The "Sapphire" could not have dragged her anchor over the Euryale's chains.

Captain MAYO:

Am a pilot; for 8 years. I should consider 250 yards, a cable's length, a safe anchorage. The vessels would tail with ebb-tide, as represented in diagram. The Sapphire would tail in shore with the ebb-tide. Do not agree with Goodall and McNear that she would drag to eastward. She would drag to S. and eastward with flood-tide. Don't think she would drag against tide. The gale of December 22 was of unusual violence. In that gale she would have dragged off shore. Can't say whether she would drag at all in that gale with flood tide.

AMOS NOYES:

I don't think, on a flood-tide, the S. E. gale could have drifted the "Sapphire" down the tide, unless the vessels were moored too close together. No collision could have occurred. In truth, both vessels should have put down another anchor. The old harbor regulations required this. No vessel permitted to lie to a single anchor more than 24 hours.

L. S. BATCHELLOR:

Neither vessels would drift on a flood-tide; both would fly around considerably.

E. R. WARSAW:

Master-mariner. Commanded the Ocean Express. Have been through the Golden Gate 13 times. If vessels in positions shown on the diagram, the "Sapphire" would have dragged to the southward, either to the south by W. or S. by E.

Libellants recall—

Captain PARAYON:

My opinion is that the wind that night had twice the force of the tide. A ship like mine, being very high out of water, sheers very fast, it is true; but it is very difficult for her in a gale to sheer much to one side or the other, as her house on deck is very high, and I have two boats on the quarter-deck. I remarked, after collision, that she did not sheer more than one or two points on one side or the other during the gale. The gale lasted four days.

In my opinion the "Sap'hire" went across the tide and wind when the flood became strong, and dragged her anchor. As she dragged she went round a little, heading to the tide, as she had nothing to keep her against the wind. As the wind and tide were in opposite directions, and the wind twice the stronger, she must have dragged down on us,
42 and would have cleared us if her anchor had not taken our chain; this brought her up, and brought her starboard bow on my starboard quarters. Both vessels swung around, and she fell alongside of me, so that we came around to windward of her. We remained in this position until tug took us.

Deposition of George Sprague, clai'mts' witness.

District court of the United States for the district of California.

THE EMPEROR OF THE FRENCH, NAPOLEON III, Emperor of the French,
vs.
THE SHIP SAP'HIRE.

Be it remembered that on this 27th day of December, A. D. 1867, at my office in the United States court building, in the city of San Francisco, personally appeared before me, A. D. Smith, a commissioner to take acknowledgment of bail, affidavits, etc., duly appointed by the circuit court of the United States for the district of California, George Sprage, a witness on the behalf of the claimant to the above-entitled suit.

Geo. F. Sharp, esqr., appeared as proctor for the libellant, and Cutler McAllister, esq., as proctor for the claimants.

And the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by Cutler McAllister, esqr.

Question. What is your name, age, occupation, and place of residence?

Answer. My name is George Sprage. My age is 41 years and upwards. My occupation is seaman; and my place of residence, New Bedford, Mass.

Question. How long have you been to sea?

Answer. I have followed the sea for 16 years in the capacity of 2d and 3rd mate. I am now on board the ship "Sapphire," in capacity of 2nd officer; have been on board her 9 days. The "Sapphire" hauled out into the stream on Wednesday, the 18th of December, 1867. Captain Boyd and a pilot had charge of her when she was hauled out into the stream. She was anchored right off Pacific-street wharf, from 200 to 300 yards
G. E. W., c'lk., by A. D. G., D. C. from the wharf. We put down the port anchor with 50 fathoms of chain. I was aboard when we anchored. The French bark was not anchored there when we went out. I did not notice her at that time. I noticed her the next day, Thursday, Dec'r 19. Her position was a little in shore on the ebb-tide.

Question. Was she astern of you?

(Objected to as leading by Mr. Sharp.)

Answer. She was astern of us; she might have been 100 or 150 yards from us. Don't know the weight of our anchor. On Saturday night,

December 21st, the wind was from the southeast. I came on deck at 12 o'clock p. m. The wind at that time was S. E.; it was blowing pretty fresh At that time we were heading to the S. E., to the wind. The tide was running out. We were off Pacific-street wharf at that time. 'Twas not so dark but that I could see the wharf. The wind continued blowing first up to 4 o'clock that morning—still from the
43 S. to S. E. I veered about from S. to S. E. during that time. I did not leave the deck until after the collision. We had 3 officers aboard, besides the captain, and 16 of the crew at that time; that is her complement. She had a full crew. The captain came on deck at 12 o'clock that midnight. He remained on deck about an hour. He then went below for a while; came on deck again at 4 o'clock, a. m. The first mate was on deck from 12 to 4 a. m. The third officer was also on deck during that time. We called the captain up for him to see the weather. The wind would come fresher in squalls. At 4 o'clock the vessel was heading to the wind, to the S. E. It was about slack-water at that time. At that time the Pacific street bore on our starboard quarter. She, the vessel, was in the same position that she was at 12 o'clock.

Question. How was the position of the vessel as to the anchors holding, at 4 o'clock?

(Objection to as leading by Mr. Sharp.)

Answer. She was heading about the same as she had been. There was no necessity for giving her more chain. She was lying still and comfortable with what chain she had, and had not moved from her position. I could tell she hadn't changed her position. I could tell she had not changed her position, because she had the bearings. Nothing was done after the captain came on deck; there was no occasion for it. The 2nd anchor was already to let go at any moment, in case we wanted to let it go. All the men were on deck from 12 to 4 o'cl'k. The vessel changed her position as to heading about 5 o'clock. She then swung with the tide, which was then running up. She then swung heading to the N. W., towards North-Point dock. Her chain then was laying slack, because the wind was blowing from the S. E., and she'red her up against the tide. That was the position she laid in when the other ship struck her, at about half-past 5. The ship was loaded with grain. She was full. She was ready to go to sea. I noticed the French ship all my watch. She was lying a little on our quarter. When the tide commenced to flood, she sheered inshore. It was light enough for me to see her that night. She next sheered offshore, and then into us. When she she'red offshore, she headed a little towards our starboard quarter.

Question. Could you have any idea, from what you saw, as to the amount of chain she had out?

(Objected to by Mr. Sharp as leading and incompetent; asking for the opinion of the witness.)

Answer. I should judge she had out 80 fathoms. The French ship came stern on to us. At the time she struck we were heading to the N. W.; we were laying in the same position that we were at 12 o'clock, heading differently. At the time she struck us our chain was slack. I was at the wheel at that time. The 3rd mate was on the topgallant forecastle. The men were all ar'anged around the deck. We were all on the look-out. We had our light in the fore-rigging. The light was a signal-lantern; a bright light—the usual light we put upon board the vessel. She struck us on our starboard bow, abreast the forechains; her stern struck us. The first damage was, her spanker-gaff was carried away. She then swung alongside of us, on the starboard; her starboard side

against our starboard side. At that time we were heading about the same; the same position. She was heading to the east; laying alongside of us. The spanker-gaff was all that was carried off when she was on our bow. She laid alongside of us two hours; during that time the position' of the ships were not changed. We were still heading
44 to the N. W. during this time. While she was alongside of us she was grinding on us and we on her. We were higher out of water than she was. After she swung alongside of us she loosed her jib and hoisted it, which pressed her more heavily on us. She was to leeward of us. The mate sung out several times for them to haul her jib down.

Question. How did the jib, being up, press her on you, she being to the leeward?

Answer. The ships were swinging about at the time, so that at times the wind would catch her jib.

Question. Did the vessel swing so at any time so as to put her at windward of you?

Answer. I don't recollect; I was so busy at the time. While she was alongside, we first broke her maintopsail yard. During this time she was grinding on us, which done us a good deal of injury. She carried away our fore and main channels, and injured our hull by her rubbing and gouging. The two vessels were separated by the tug. Everything was done by us to get them clear; by cutting away the rigging, and one thing and another, to clear the ship. We set our mizzentopsail, and tried to back our ship off; kept it up, I should judge, two hours. She kept up point of her jib all the time; she had only hauled it a part of the way down. Nothing was done on board of her by crew or officers, that I could see, to try to get clear of us. The two captains went ashore in her boat (the French boat) to get the tug.

Cross-examined by Geo. F. Sharp, esq'r.:

Cannot give the weight of the anchor; it was a heavy anchor; wood stock; old style of anchor.

The bottom was muddy; good holding ground. The water was about 7 fathoms deep.

I did not notice the French vessel until the next day after we anchored. She laid nearly astern of us; about 100 or 150 yards from us. I noticed her Saturday, before dark, (Dec. 21st,) her position then was the position described.

I did not know at that time that our vessel had cleared.

I went on board Wednesday; she was then lying at Howard-street wharf.

The tug took her out Wednesday night, about sunset, to an anchor. We had a pilot.

I cannot give the name of the vessel nearest to us. The nearest vessel was about 800 yards.

Don't know the name; can't say what her rig was, whether ship, bark, or brig, *on* her tonnage. She was lying on her port quarter.

The pilot put us in the place where we anchored. Do not know his name.

We did not go out to sea, because we were not ready.

I saw the chain let out; we were laying at 50-fathoms chain. It was at no time lengthened. We let go our 2nd anchor just before she struck us. We did that after the flood began to make up, in case the other anchor should drag, which it did not. This was half an hour before the collision, that we let the 2nd anchor.

The "Sapphire" was heading N. W., at that time when we let go the 2nd anchor, on the change of the tide. At the time the *the* French ship sheered inshore if she had let go her 2nd anchor it would have saved all trouble.

(The last part of the question objected to as not called out by any question.)

45 The 2nd anchor was the same style, and about the same weight as the anchor first let go. The port anchor might have been 200 or 300 pounds heavier.

Let go 20 fath's chain on 2nd anchor. We took up our starboard anchor after the collision. We have not yet lifted the other anchor.

A bight of the Frenchman's chain was over the bitt of the anchor we raised. Could not tell there was anything on the top of our chain until we got the chain to the top of the water. The chains were not foul. We took up the anchor we dropped last and the Frenchman' chain was on that.

All the watch were on deck from 12 to 4 o'clock to stand by in case they were needed.

I saw the French ship coming on us about 10 minutes before she struck. She came upon us very rapidly. She was turning with the tide. She swung first. The tide running up.

It makes no difference in a vessel swinging whether she is loaded or in ballast. She swung 7 or 8 minutes before we did. I was certain about that.

She struck us down about 15 minutes after she swung, as near as I can recollect. I will say that it was longer than 5 minutes.

The stern of the French vessel struck on our starboard-bow. She struck pretty heavy; it was a violent shock. She the' swung her starboard side to our starboard side, and she remained in that position until she was towed off. The tug took a hawser from her stern. She had shipped her starboard chain about 20 minutes before the tug came, and she only had one anchor down, the other anchor was hanging to her cathead. A small anchor. Cannot say whether it was the same style as our anchor.

Almost as soon as she struck, they hoisted the jib of the French vessel. Can't say at whose request her jib was hoisted. I heard no order or request given from our vessel. I remained at the wheel until she struck. I did not remain at the wheel after that. 6 or 8 minutes after the French vessel hoisted her jib, we hoisted our mizzen-topsail. Hoisting our mizzen-topsail had no effect upon our position.

The crew of the French vessel made no effort to try and clear from us; the efforts were all made on our part. We remain now in the same position that we were before the collision, bearing the same, no change. I am certain about that. We are now abreast of Pacific-street wharf. We now lie, as near as I can judge, about 200 yards right abreast of Pacific-street wharf; the same bearings that I have referred to.

Direct examination resumed:

From 4 o'clock to the time of the collision, I was at the wheel.

GEORGE SPRAGUE.

Subscribed and sworn to before me, this 27th day of December, 1867.

A. D. SMITH, *U. S. Com'r.*

Deposition of Aeaston.

District court of the United States for the district of California.

THE EMPEROR OF THE FRENCH, NAPOLEON III, Emperor of the French,
vs.
THE SHIP SAPPHIRE, &c., &c.

Be it remembered that, on this 27th day of December, A. D. 1867,
46 at my office in the United States court building, in the city of San Francisco, personally appeared before me, A. D. Smith, a commissioner to take acknowledgement of bail and affidavits, etc., duly appointed by the circuit court of the United States for the district of California, William H. Aeston, a witness on the behalf of the claimants in the above-entitled suit.

George F. Sharp, esqr., appeared as proctor for the libellant, and Cutler McAllister, esq're, as proctor for the claimants.

And the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon and say as follows, that is to say:

Examination-in-chief by Cutler McAllister, esq'r:

Question. What is your name, age, occupation, and place of residence?

Answer. My name is William H. Aeaston. My age is 40 years and upwards. My occupation is seaman; and my place of residence Boston, Mass. I have been to sea going on 23 years, as seaman and officer. I am 3d mate of the "Sapphire." I joined her on the 19th of December, 1867. She was then lying off Pacific-st. wharf, as near as I can judge. I don't exactly know the name of the streets. She is now about 100 yards to the northward and westward of where she was when I went aboard of her. On Saturday night, December 21st, I came on deck at 12 o'clock midnight. At that time it was blowing a six-knot breeze; the wind was increasing. The mate, capt., and 2d mate, and myself were on deck; the crew was on deck aft. All hands were on deck. All hands staied on deck until after the collision. Can't tell how long the capt. was on deck. When he went below I was forward looking out before the vessel, to see which way the anchor was tending. No one but myself and the crew were forward. I was on the topgallant for'castle. We had 3 officers besides the capt., and all the crew moving about on deck, looking out to see if she dragged any. The wind kept increasing up to the time of the collision. When I first went on deck, the tide was on the ebb. The tide commenced to flood at ½ past 3. It was slack-water at ½ past 3, as near as I could judge. The vessel was heading to the southeast during the ebb-tide. When the tide commenced to slack, there was a change in the heading of the vessel. She commenced to swing, so that her stern pointed towards the town, and her head northeast. The wind was so strong from the southward that it kept us in that position until about a quarter past 5. At 5 o'clock I was aft with the capt'n and the 2d mate at the wheel. She did not change. At the time of the collision her head was towards t' northeast. At the time of the collision the tide was running strong, and the anchor was tending off her port bow. The wind was so strong that it kept our stern down to the towen, towards North Point. The French ship at 5 o'clock took a sheer in towards town.

She was laying to the northward and westward of us. She sheered in, I dare say, all of 600 yards, until her light went out. Can't tell how much chain she had out.

Question. How much chain must she have had out to have sheered that distance?

(Objected to by Mr. Sharp as leading and uncompeted.)

Answer. As near as I can judge, from the scope I had of the chain, she must have had out 75 or 80 fathoms.

Question. With 75 or 80 fathoms of chain out, according to your experiences, could a vessel sheer six hundred yards?

47 (Objected to by Mr. Sharp, as cross-examination, as leading and incompeted.

Answer. By dragging she could.

Question. From what you saw of the French ship, did she, while sheering, drag; and if so, in what direction?

(Objected to by Mr. Sharp as leading, and asking only for the opinion of the witness and not for facts.)

Answer. From the best of my opinion she did drag, and dragged southwest. During the dragging I was aft near our wheel-house. We have a covering over our wheel. I went forward right away to see that we were not dragging ourselves. I had a range by lights on shore, and I saw that we were not dragging. We had our port anchor down at that time, with 50 fathoms chain out; there was 50 fathoms chain to the water's edge. Our starboard anchor was hanging to the cat-head. It would not have taken us two seconds to have let go. We did not let go at any time until after she got afoul of us. When she struck us, she *she* struck us on our starboard side just forward of the fore-rigging—just forward of the fore-chains. Her gaff got foul of our fore-brace-pennant, and her junking into the sea carried away her spanker-gaff. When she struck our bow, she carried away our ring-stopper; that was the reason that our anchor was let go. The ring-stopper held the anchor to the cat-head.

Question. Then the anchor was let go by the collision, not by the order of the master?

(Objected to by Mr. Sharp, as leading and incompetent.)

Answer. Yes. The French ship sheered in for town, and then she came up, head to tide, and remained there 10 minutes, as near as I could judge. Could not tell the exact time, when she took another sheer off towards the northward, and stopped then for some 10 or 15 minutes, as near as I could judge; when our stern lay right on for town, and she backed right down, stern into us, from the northward, backing down southwest. We were heading then about off northeast. Her stern was tending S. S. W. towards town. The French ship was then to the northward of us.

(A map of San Francisco, issued by the S. F. News Letter, was here shown witness.)

After the French ship sheered in for North Point, she was northwest of us; then she made a sheer off town, over towards Goat Island, and during the time that she sheered off, our stern swung around to the northeast, when she came down right stern on to us, and struck us on the starboard side, just forward of the fore chains. Her starboard quarter struck our starboard bow; then she swung alongside.

(Here counsel for claimant asked the commissioner to note the fact that witness stated, on page 21, after the map was shown him, that the French ship made the sheer down over towards Albatross Island, pointing to Goat Island.)

We commenced getting up fenders to keep the vessels from chafing

too much. The Frenchman was lying to windward. She loosed a jib. I couldn't tell whether it was her jib or outer jib. She had it half-way up when our 1st officer sung out to them to haul it down, and then there was not one of them that stirred to touch it. When she first came in collision with us, just before she struck us, I called out to them a dozen times to pay out more chain, and let go her 2nd anchor. Our 2nd mate was at the wheel at that time. She laid alongside us two hours, as near as I can judge. Her jib-boom was just even with our mizzen-rigging. Then she surged ahead again, and carried away
48 her jib-boom and martingale; then she surged astern again until she got on our bow. When she came abreast of our bow her bowsprit got over our bow and carried her bowsprit away, and turned it right over on her own bow. She surged further astern and got in under our bow. Then the tug came out, which our captain went after, for there was not an officer nor a man aboard the French vessel that would offer to fire a gun or go after a tug, until our captain jumped aboard their vessel and got into her boat. They got a hawser out off her quarters on to the tug; think it was the St. Thomas. When the two vessels came into collision, our head was heading in town when she first struck us; then we swung away round with her alongside of us, with her head to the northeast, as near as I could judge. This brought her on our windward side. It was not the wind, but the tide that brought her down on us. As near as I judge, when she struck us it was quarter past 5. Then she came down her stern on to us. I reported it to the captain right away as soon as I saw her coming down on to us, and the captain sung out to give our ship more chain. I went to work and gave her more chain, but still it was no use; before we could get out of the Frenchman's reach she was right down on us.

Question. What took place while the two vessels were together, if anything, in regard to their dragging?

Answer. I saw that we were dragging, by the ranges I had on shore. I went to the mate, (this while the vessels were together,) and told him we were dragging down on to the "Cleopatra." He said he could do nothing more only to get her, the French ship, clear. We were in that position two hours, as near as I judge. We had a regular signal-light in our starboard rigging. Was on the top foregallant forecastle, and the captain and 2nd mate and watchman was aft, and the crew was all around deck on the lookout.

No cross-examination.

W. H. AEASTON.

Subscribed and sworn to before me this .27th day of December, A. D. 1867.

A. D. SMITH,
U. S. Com'r.

Hearing continued until Saturday, Dec'r 28, 1867, at 10.30 a. m.

Deposition of Patterson.

District court of the United States for the district *court* of California.

THE EMPEROR OF THE FRENCH, NAPOLEON III, Emperor of the French,
vs.
THE SHIP SAPPHIRE HER TACKLE, &C., &C.

Be it remembered that, on this 28th day of Dec'r, A. D. 1867, at my office, in the United States court building, in the city of San Francisco,

personally appeared before me, Andrew D. Smith, a commissioner to take acknowledgment of bail and affidavits, etc., duly appointed by the circuit court of the United States for the district of California, Calvin M. Patterson, a witness on the behalf of the claimants in the above-entitled suit, pursuant to the adjournment of the hearing of the testimony herein made on the 27th December, 1867.

49 Geo. F. Sharp, esqr., appeared as counsel for the libellant, and Cutler McAllister, esqr., as counsel for claimants.

And the said witness having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by C. McAllister, esq're.

Question. What is your name, age, occupation, and place of residence?

Answer. My name is Calvin M. Patterson. My age is 40 years and upwards. My occupation is shipmaster and mate; and my place of residence, New York City. I have been to sea 27 years. I am now chief officer of the ship "Cleopatra." On the night of Saturday, December 21st, 1867, the "Cleopatra" was at anchor off Vallejo-street wharf. I was on deck all night on board the ship "Cleopatra." During the night I saw the French ship "Euryale" and the "Sapphire." I saw them in collision. Just before the collision, the French ship set her jib. She cut and sheered about considerable—a great deal. After they run in collision both ships drifted over towards the "Cleopatra." I am positive of that. The "Sapphire" at the time of the collision was heading towards the eastern, and the Frenchman was heading towards the westward. On Saturday afternoon, before the blow, the Frenchman was a very little nearest to the "Cleopatra." At the time the "Sapphire" was a little outside to the eastward of the French vessel. The "Sapphire" was in range with us. The Frenchman was in shore on our starboard bow on ebb-tide. The Cleopatra had only one, the port-anchor down that night. We were loaded that night with a full cargo, 1,500 tons coal and some oak timber.

Cross examination by Mr. Sharp:

The "Cleopatra" anchored there on the night of Saturday, the 14th Dec'r. The next vessel to us at that time, I cannot tell the name of. The "Intreped" laid to the northward and eastward of us, about north-by-east, about 1,000 yards distant.

There were several vessels laid astern of us on the ebb-tide to the northward of us. I cannot tell their names. This was when we anchored. I think there was one ship in shore, but not nearer than the "Intrepid." I think the Intreped was the nearest ship to us. I think we had been there 2 or 3 days before the "Euryale" was anchored there. She came there in tow of a tug and anchored. She came on the ebb-tide and anchored about one point on the "Cleopatra" starboard bow. The "Cleopatra" swung stern to the northward. The "Euryale" swung stern to the northward also. I had on the "Cleopatra" the carpenter, myself, 3d mate, cook, one man, the captain, and his wife, on board on the night of Saturday, Dec'r 21st, 1867.

I was on deck from half past six, Saturday night, until long after the collision, and until 10 o'clock Sunday morning. Capt'n M. O. Daley came on deck about 20 minutes past 5 o'clock, Sunday morning. The two ships collided just before the captain came on deck.

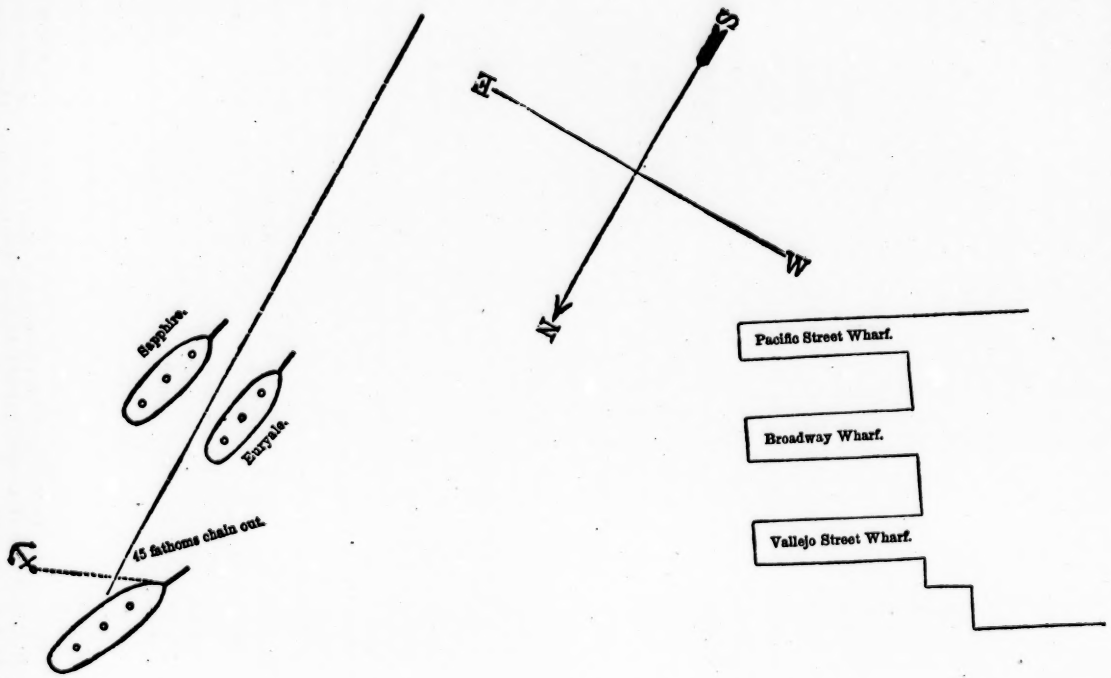
Just after they went together, I went to call the captain. They had been together perhaps two minutes. My object in calling the capt. was to provide against accident that might ensue from the collision of the "Sapphire" and "Euryale," so that we might let go the 2nd anchor, if required. I stood watch till 8 o'clock that night, (Sat. night.)

50 Then the carpenter came on deck at 8 o'clock. His name is Lawrence Murphy. He stood anchor watch until 12 o'clock that night; then he was relieved by Mr. Reed, the 3rd mate who stood until 4 o'clock, Sunday morning, and then retired below, leaving me on the "Cleopatra" deck alone. I was on the poop after Reed went below. Most of the night I was on the poop, watching these ships at the same time.

The collision occurred a little over an hour after Reed went below. I noticed my watch and saw that it was five o'clock, just a few—say 3 or 4—minutes before the collision, and therefore I fix the collision to have occurred a few minutes after 5 o'clock. I noticed the "Sapphire" when she first came to an anchorage; don't remember the day. I am confident she came in tow of a tug. I saw her when she dropped her anchor. I think the tide was about still. Can't say the time of day.

I knew the "Sapphire;" was aboard of her in New York; not in this harbor. I know her present captain, Boyd. I have not seen him for many years until I saw him here since the collision. Captain Boyd and myself were schoolmates in Maine; that was 25 years ago. I have not seen him since until now.

DIAGRAM "A."


S
E
W
N
Sapphire.
Eurysis.
45 fathoms chain out.
Pacific Street Wharf.
Broadway Wharf.
Vallejo Street Wharf.

52 (Diagram "A," showing position of the vessels just before the collision, and the time the tide was turning ebb, made by commissioners at request of witness and under his direction.)

Witness says: I cannot tell the amount of chain out or how they tended on the "Euryale" and the "Sapphire." Euryale swung as it was dark.

Question. Can you tell how the Sapphire swung?

Answer. She swung to the northward and eastward.

Question. How is it that you can tell how the "Sapphire swung" when you cannot tell how the "Euryale" swung, she being the nearest to the "Cleopatra?"

(Objected to by Mr. McAllister as assuming that the "Euryale" was nearer to the "Cleopatra" than the "Sapphire.")

Answer. Because I could see by the light in the Sapphire binnacle that her stern was towards us, to the northward and eastward.

Question. Which of the two swung first?

Answer. I cannot say now. I don't remember.

Question. Did you see them both swing?

Answer. I saw them both after they had swung.

Question. Did they both swing together?

Answer. I do not know whether they both swung at the same moment or not. I don't remember.

Question. If you noticed any difference between the time of their swinging, please give us the particulars of their swinging.

Answer. I could not say the time that the Frenchman swung. As near as I could judge, I think they swung both about the same time.

Question. Which way was the wind blowing at the time of the collision?

Answer. About southeast.

Question. Was it violent?

Answer. Yes, sir; a very strong gale.

Question. Had you noticed any difference in reference to the blowing of the wind from 12 o'clock to the time of the collision? If so, state particularly.

Answer. I don' think there was any change in the wind more than that it was squally all the time, blowing with about the same force between the squalls and upon the same quarters. It blew just about the same at 5 o'clock, Sunday, that it did at 12 o'clock *Sunday that it did at 12 o'clock*, 5 hours before.

Question. Did you notice the anchor and chain of the Sapphire?

Answer. No; could not see it. It was dark.

Question. Have you ever noticed her anchor to see how it was made, its weight, &c.?

Answer. No sir; have never noticed it.

Question. Had you noticed any change in the position of the "Sapphire" and "Euryale" from 12 o'clock up to just about the time of the collision?

Answer. I could see the Frenchman sheering about with the tide.

Question. What do you mean by the Frenchman sheering about with the tide?

Answer. Well, across the tide, back and forward. The French ship being lighter than the "Sapphire," the wind had more effect on her than the tide did, and caused her to shove about. The "Sapphire" being loaded drew more water, and hence was more stationary.

Question. If you noticed the relative position of the two ships at the time you went on deck at 6 o'clock down to the time of the

53 collision, and any change occurred by either vessel dragging their anchors, please state it fully and particularly.

Answer. I think that both ships had dragged their anchors, because both were nearer to us than they were when they anchored. I cannot tell how much they dragged.

Question. If you mean to be understood that the Euryale dragged her anchors on Saturday night and on Sunday morning down to the time of the collision, state what distance and what direction she had dragged. I want you to answer this question fully, if you have any knowledge on the subject.

Answer. I could not tell in what direction, or whether she was dragging, or whether they *was* giving more chain.

Question. How much nearer, if any, at the time of the collision, was she to the "Cleopatra?"

Answer. I cannot say how much nearer she was, if any. We were giving our ship more chain at the same time.

Question. State when you gave your ship more chain, and how much, and what effect had it in regard to the distance from the "Euryale?"

Answer. I did not know at the time when we gave the "Cleopatra" more chain. It was between 12 o'clock Saturday night and 6 o'clock Sunday morning. We gave her between 8 and 10 fathoms of chain. I think 10 fathoms. It increased the distance between the "Euryale" and the "Cleopatra."

Question. Cannot you now tell about the time you lengthened the chain?

Answer. No, sir.

Question. Was it before or after the collision?

Answer. 'Twas before.

Question. Who assisted you, if anybody?

Answer. All hands, captain and all, were on deck when we gave her the chain.

Question. You stated in the former part of your examination that you went to call the captain when you saw the 2 vessels together. Was the chain lengthened before or after?

Answer. After I called the captain the chain was lengthened, and soon afterward we let go the starboard anchor with 30 fathoms of chain.

Question. How long was it before the collision that the French ship set her jib?

Answer. I don't know how long it was before the collision.

Question. Did not the position of the "Sapphire" at that time hide the "Euryale" from your view?

Answer. There was a difference in the position of the lights of the two ships several times before the collision. The Euryale had 3 lights and the "Sapphire" one, and in setting the lights the "Euryale" dropped one of her three; this was just about the time the two ships came together.

Question. About how far was the "Euryale" from Pacific-street wharf before she turned to the tide?

Answer. I could not tell. It was blowing very hard and you could not judge the distance well. She was outside the ship-channel, however. The reason I know that is because I have been chief officer on the Panama steamers, and they used to go inside of where the 3 ships laid.

Question. About what distance was the "Sapphire," just before they turned from the "Euryale?"

Answer. I could not tell the distance because I did not take pains to notice the distance.

54 Question. Did you notice either of the vessels dropping the 2nd anchor?

Answer. I did not. I did not notice the size of the "Euryale's" anchor, or the "Sapphire" either. The bottom where the "Cleopatra" was anchored was mud and shells; soft bottom. I don't know the bottom where the "Sapphire" and "Euryale" were anchored.

Direct examination resumed:

Question. Look at the diagram "A," page 32 of this testimony, and state what it represents.

Answer. The ships in the diagram are nearer than they appeared to be in the stream. I mean the "Sapphire" and the "Euryale." That represents the position of the "Cleopatra," "Sapphire," and the "Euryale" pretty nearly; not exactly. They are a little nearer together than the ships were; there was more than a ship's length between them.

Question. Does it represent correctly the relative positions without the distance of the three vessels?

Answer. As near as I can judge it is correct.

Question. Were either of the vessels tailing to an ebb-tide, on a line with the "Cleopatra; and, if so, which one?

Answer. The "Sapphire;" at the same time the "Euryale" was tailing to the eastward.

Question. At what time was the "Euryale" tailing to the eastward?

Answer. At the same time that the "Cleopatra" was tailing to the northward.

Question. With an ebb-tide, in calm weather, were either of the vessels tailing on a line with you? If so, which one?

Answer. It was not calm.

Question. In calm weather, and with an ebb-tide, were either of these vessels tailing in a line with you; and, if so, which one?

(Objected to, by Mr. Sharp, as leading, incompetent, and not cross-examination of the matter called out by libellant on cross-examination.)

Answer. But there was no calm weather; but in case there was calm weather, the ship would tail to the tide.

(Counsel for claimant here explained to witness that he is not asking how the vessels tailed during the storm.

Counsel for libellant objects to co'nsul for claimants giving any direction or instruction to the witness, and that the proceeding is improper & irregular.)

Question. I' calm weather, and with an ebb-tide, were either of those vessels tailing in a line with the "Cleopatra;" and, if so, which one?

Answer. Well, but we had no calm weather. Before the blow the "Sapphire" tailed just outside of us on the ebb-tide. The Frenchman would have tailed just in a line with the "Cleopatra."

Question. On page 38, in your cross-examination you state that you lengthened your chain just before the collision, and on the same page you also stated that you lengthened your chain after you called the captain. Which is correct; did you lengthen your chain before or after the collision?

(Libellant objects to the *witness*, and insists that he has no right to tell him what he has sworn to on cross-examination, and should ask the question without leading him.)

Answer. We gave the ship 3 times during the night. I do not remember the times we gave it to her.

Question. Did you give her any chain after the vessels were in collision; and, if so, for what purpose?

55 Answer. We did, in order to sheer ship clear of the other two.

Question. What were the other two vessels doing at the time you gave her the chain?

Answer. They were dragging down towards the "Cleopatra;" the "Sapphire" with her head to the eastward, the "Euryale" headed to the westward. They were then in contact. The "Euryale" with her jib set.

Cross-examination resumed:

Question. If you lengthened the "Cleopatra" chain from the time you went on deck to the time of the collision more than once, please state the different times, and the amount of chain given at each time.

Answer. I did not know the time, and I did not know the *the* amount of chain; but I know that we gave the ship more chain more than once during that time.

C. M. PATTERSON,
Chief Officer Ship "Cleopatra."

Subscribed and sworn to before me this 28th day of Dec'r, 1867.
A. D. SMITH, *U. S. Com'r.*

Deposition of Waterhouse.

District court of the United States for the district of California.

THE EMPEROR OF THE FRENCH, NAPOLEON III, Emperor of the French,
vs.
THE SHIP SAPPHIRE, HER TACKLE.

Be it remembered that, on this 28th day of December, A. D. 1867, at my office, in the United States court building, in the city of San Francisco, personally before me, A. D. Smith, a commissioner to take acknowledgment of bail and affidavits, etc., duly appointed by the circuit court of the United States for the district of California, Frank K. Waterhouse, a witness on the behalf of the claimant in the above suit.

Geo. F. Sharp, esq'r., appeared as co'nsul for the libellant, and C. McAllister, esq'r., as counsel for the claimants.

And the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by C. McAllister:

Question. What is your name, age, occupation, and place of residence?

Answer. My name is Frank A. Waterhouse. My age is 37 years and upwards. My occupation is seaman, and officer; and my place of resi-
G. E. W., cl'k, by A. D. G., D. C. dence, Gardiner, Maine. I have been going to sea over 20 years, as boy, seaman, and officer of ship. Once was master. I am now first officer of the Sapphire. I joined her alongside of the dock here when she began to load. She went out into the stream on Wednesday, Dec. 17, '67, in tow of the steam-tug Goliah.

Question. Look at diagram "A," page "32" (page of this transcript) of this testimony, and state whether the position of the vessels there put down are the correct position of the vessels at the time you anchored there.

56 Answer. I should judge that the "Sapphire" was a little further to the eastward than she appears in the diagram. We anchored from a cable to a cable and a half length from the "Euryale."

Question. Where were you on the night of Saturday, De'r 21, 1867?

Answer. I was on board the "Sapphire;" on deck most of the time. I was out and in every 15 minutes during the night; that is, after 10 o'clock, when it commenced to blow hard. The captain was in and out until after midnight. All the officers and all the crew were supposed to be on deck. We had our port anchor down with 50 fathoms to the water; the starboard anchor at the cat-head already. I did not see any particular danger at all. The captain told me that if she was likely to start to put the second anchor down. 'Twas puffy and squally, and I would occasionally go and feel the chains to see whether she was dragging or not. I did not see as the ship dragged any; could not tell by the anchor or by the lights ashore that she was dragging. The tide turned between 4 and 5 o'clock Sunday morning, about half past four. The "Sapphire" tailed to the ebb, down to the time the tide turned.

Question. When did the ship commence to trail in any other direction?

Answer. About half past 4 she laid across the tide and wind, heading towards town; she dodged and cut about a little; no more than could be expected from that tide and wind, with a strong tide and a strong wind. The tide was then flood. We were watching the French ship all night, but I didn't see any difference between us as we lay.

Question. When did you first notice any difference in the position of the "Euryale?" State what the difference was.

Answer. The first that I noticed she was laying on the tide about the same as we were. She started and came in towards the town in the direction of Vallejo-st. wharf; then she run in as far as her cable would apparently allow her. Then she backed off stern first and came down on us. Her starboard quarter took our starboard bow; that let go our starboard anchor, and she swung alongside of us, side by side. We then swung half-way round, head to the island and stern to the docks, which brought her to the windward of us. The jib I did not notice until she was alongside. I then tried to make them haul it down. We set our mizzen-topsail and spanker and tried to back the ship off, but didn't succeed. She was then to our windward, and we were in collision.

Question. While in collision, did the two vessels change their position any?

Answer. They swung half-way round so that as to head right the reverse.

Question. Did the vessels change position any by drifting?

Answer. I think they dragged a little to leeward down the harbor. They were in collision about an hour and a half; somewhere there.

Question. Do you know whether you cut around just before the time of the collision?

Answer. Well, we might have cut around a little; could not expect to lie there in that wind and tide steady; we cut around, of course, some.

Question. From what you saw of the Frenchman's sheering, how much chain should you judge she had?

Answer. She had out a very long scope of chain, or lifted her anchor; she ran in a long distance for a commonly moored ship.

Question. Did she let out any more chain after she came in collision with you?

57 Answer. Not to my knowledge.

Question. What did she do with the anchor and chain she had down, and did she have more than one down?

Answer. She had but one anchor down. She did not do anything with it that I could see. She had one at the port-bow, that I saw. I suppose she had but one down.

Question. How did she get the one that she had down up?

Answer. She slipped, unshackled, her chain, and has not got it up yet; that was after the collision, and after the tug-boat towed her clear of us that she unshackled her chain.

Question. What was the character of the night as to darkness?

Answer. It was very dark, boisterous night, squally, blew very heavily.

Question. How could (you) judge of the position of the "Euryale?"

Answer. By her lights.

Cross-examination:

Question. Did you lengthen your chain any time during Saturday night?

Answer. No, sir.

Question. Did you notice any difference in the respective distances between the "Sapphire" and the "Euryale" prior to the turning of the tide?

Answer. No; I did not.

Question. Which one turned first with the tide?

Answer. I did not see any difference. We both commenced turning about the same time, the wind and tide both being very strong, and the reverse one blowing down, the other running in.

Question. About how long were you in the turning?

Answer. We commenced to turn about half-past 4. We laid across the tide about an hour before we came in collision.

Question. How long were you engaged in turning?

Answer. After we came in collision there was considerable excitement on board, and should judge it was something inside of an hour before we swung half round.

Question. Is there any difference between a vessel loaded and a vessel in ballast, in reference to turning with the tide?

Answer. Yes. I should judge there would be that night at that time. I should judge a light vessel of the same size would turn slower than one loaded, with the wind blowing down. The wind had more hold, the tide less. The "Sapphire" is 1,305 tons; should judge the "Euryale" was just about half that tonnage.

Question. Take those two vessels in the position that they were in that night, and the wind and tide, which, in your opinion, would turn first with the tide?

Answer. I should not think there would be any great difference. The "Euryale" is a short, deep ship, and the "Sapphire" is nearly twice her length, one-third longer.

Question. Which vessel, in fact, did turn first that night?

Answer. We turned together. She run in, backed right down on us, then she slewed round both starboard sides together; then we both took a turn half-way round.

Question. Did they collide whilst swinging with the tide?

Answer. She ranged astern while swinging.

Question. Did they collide whilst swinging with the tide?

58 Answer. What do you mean by that?

Question. Did the vessels come together while swinging with the tide?

Answer. They were together when they swung around.

Question. Did the two vessels come together while swinging with the tide?

Answer. Just as I stated before, the two vessels were laying across the tide when they came together.

Question. When your vessel turned with the tide, which way did she turn?

Answer. She swung around this way with the current. We laid across the tide until after the collision. We had not swung round until after the collision.

Question. Had the "Sapphire" turned more than half-way round with the tide when she was struck by the French vessel?

Answer. I can't say without a point either way, but she had not turned entirely round—about half-way.

Question. If you dragged after they came together, tell in what direction, and about how much.

Answer. If she dragged, she dragged to the northward and westward. I can't say how much. I can't see by the land-marks on shore that she has altered her position.

Question. Did you see the Euryale at any time dragging her anchor?

Answer. I can't say. I couldn't see her anchor.

Question. Do you now say that the present position of the anchor of the "Sapphire" is in the same position as it was before the collision?

Answer. I could not say exactly. She might have dragged a little; she might have not. I can't say that she has.

Question. Is it you' present belief that she has changed her position since she was first anchored?

Answer. I think she dragged in the collision to the northward and westward.

Question. If you wish to be understood that she did drag in the collision to the northward and westward, state how far, in your opinion, she did drag.

Answer. Perhaps 50 or 60 fathoms.

Question. Do you mean to be understood that she did, in fact, drag, or is it only your opinion?

Answer. I think she did drag in the collision.

Question. Two vessels turning with the tide, coming together at half-tide, half turned, the wind blowing heavily from the "southeast," which way would they drag their anchors?

Answer. A ship might get across the tide, sheering with the tide, and run to windward with the anchor. I have seen the thing done. It is generally supposed that they would draw with the wind. They might get caught in the tide, and trip their anchor, and cut to the windward.

Question. About what size anchor had you down? Describe it.

Answer. I think about 3,800 or 4,000 pounds, wood stock, old style of anchor, an inch and $\frac{7}{8}$ chain. The other anchor is 300 or 400 pounds heavier, I think.

Question. Was not the starboard anchor let go before they struck?

Answer. No, sir.

Question. Do you mean to be understood that the "Euryale" put up her jib before you came together?

Answer. I could not say about that. The first I knew of it was when she was alongside.

59 Question. Do you consider 50 fathoms sufficient length of chain for the "Sapphire" in the condition that she was in on that night, with the wind blowing as you have stated?

Answer. Until I thought she wanted more, then I should have let out the 2nd anchor and given her more chain or both anchors.

Question. State what distance the two vessels were apart on the evening before the blow, at dark Saturday evening.

Answer. A cable or a cable and a half's length. A cable is 90 fathoms.

Question. Did you consider that at that time a safe position?

Answer. Yes, sir.

Question. Do you mean to be understood when the "Sapphire" took her position and anchored, that she was within a cable or a cable and a half's length of the "Euryale?"

Answer. As near as I could judge.

FRANK K. WATERHOUSE.

Subscribed and sworn before me this 28th day of Dec'r, 1867.

A. D. SMITH,
U. S. Com'r.

Deposition of Boyd.

District court of the United States for the district *court* of California.

THE EMPEROR OF THE FRENCH, NAPOLEON III, Emperor of the French,
vs.
THE SHIP SAPPHIRE, &c.

Be it remembered that, on this 30th day of Dec'r, A. D. 1867, at my office in the United States court building, in the city of San Francisco, personally appeared before me A. D. Smith, a commissioner to take acknowledgment of bail and affidavits, etc., duly appointed by the circuit court of the United States for the district of California, Alpheus P. Boyd, a witness on the behalf of the claimants in the above-entitled suit.

Geo. F. Sharp, esqr., appeared as counsel for the libellant, and C. McAllister, esqr., as counsel for the claimants.

And the said witness having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the case aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by C. McAllister:

Question. What is your name, age, occupation, and place of residence?

Answer. My name is Alpheus P. Boyd. My age is 40 years and upwards. My occupation, shipmaster, and my place of residence, Bath, Maine. I am the master of the ship "Sapphire." I have been to sea 23 years as a sailor, officer, and master. I first joined the "Sapphire" in May, 1867. I was master of her at the time of the collision. She went out into the stream Wednesday, the 18th Dec'r, 1867. About 5 o'clock p. m. we anchored in the stream.

(Witness' attention called to diagram "A," on page 32 of this testimony—page of this transcript.)

Question. Look at the diagram and state whether it represents correctly the relative positions of the "Euryale" and the "Sapphire."

Answer. It is a fair representation, I believe.

Question. State the distance between the "Sapphire" and the
60 "Euryale" on the afternoon of Saturday, De'r 21st, 1867, before it began to blow.

Answer. I judge there was about 90 fath's—a cable's length.

Question. Was that the distance at which you first anchored from the "Euryale?"

Answer. It was about 90 fathoms.

Question. What time did you leave the deck on Saturday night?

Answer. Between 11 and 12 o'clock.

Question. What anchor did you have down, how much chain out, and what were your orders in regard to letting go the second anchor?

(Objected to by Mr. Sharp as to so much of the question as requires an answer as to the orders given in regard to letting go the 2nd anchor, as incompetent, irregular, and not the best evidence.)

Answer. I had down the port anchor—about 50 fathoms chain out. I ordered the mate to keep a good look out, and give me a call if it was necessary. I was very tired that night, and did not want to be called unless it was necessary; had been up the 3 nights previous.

Question. Where was your starboard anchor during that night?

Answer. All ready to let go; range of chain overhauled. Could have been let go in a second.

Question. What is the weight of your port anchor, and the size of your chain?

Answer. Between 3,600 and 3,800 lbs. The chain is $1\frac{3}{4}$ or $1\frac{7}{8}$ inches.

Question. When did you next come on deck, that night or Sunday morning?

Answer. Between half-past three and four o'clock.

Question. How long did you remain on deck at that time?

Answer. I remained all the time until after the collision, except I went below on'e to change my hat.

Question. What was the character of the weather during that time?

Answer. When I first came up it was blowing very heavy, much stronger than I expected. 'Twas blowing very heavy during all that time.

Question. How was the tide when you came on deck, and how did your vessel tail?

Answer. 'Twas near low water, about. I had no compass on deck, and couldn't see exactly how she tailed. She was tailing down stream.

Question, Did she tail to the ebb, or had she commenced to turn with flood?

Answer. She had slackened her chain, and had commenced to turn a little with the flood shortly after I came on deck.

Question. How long after you came on deck was it, if at all, that she lay across the tide and wind?

(Objected to as leading and incompetent on direct examination.)

Answer. I don't remember the number of minutes—the exact time.

Question. Did you find, when you got on deck, that she had drifted?

Answer. I could not see that she had. It was very dark when I got on deck.

Question. About how long had she laid across the wind and tide before the collision?

Answer. I think about half an hour. I could not tell the time exactly.

Question. While you were on deck did you see the "Euryale" lights at all, and could you judge of her position?

61 Answer. I saw them when I first came on deck; they were then on our starboard quarter. After that she shot in shore, so that I did not see her at all, and considered that we were at a perfectly

safe distance, but were on the point of letting another anchor go as soon as I got the ship in a position to do it.

Question. When did you next see the "Euryale," and where? State particularly.

Answer. After she shot away from us in shore, I stepped down below a moment to get a hat, and when I came up she was coming right to us.

Question. State particularly where she struck you, and what damage was done to either vessel.

Answer. She struck us on our starboard bow, and came right round alongside. I was below when she first struck, but was on deck when she came alongside. I had the second mate at the wheel to sheer the ship, to get her in a position to let go the other anchor. She first struck us on our starboard bow. When I first saw her she was coming right alongside.

Question. What part of her struck her starboard bow? In what position did she swing alongside of you? How were both vessels heading at the time she first swung alongside of you? Did they change their position while in collision? Did they drift while in collision, and how long were they together? What portion of the "Euryale" was damaged before the vessel got separated, and what portion of the "Sapphire?"

(Objected to by Mr. Sharp, 1st, as leading; 2nd, as cross-examination and incompetent, and answered by a former question, which was leading.)

Answer. When I saw the "Euryale" *t*he was coming right alongside. I think her stern struck us first and that she swung around. She swung alongside of us with her starboard side to our starboard side. At the time she first swung alongside of us, our ship was heading a little in shore; she was tending a little in shore. The "Euryale" was heading in an opposite direction from us, while in collision. I could not tell exactly that they changed their position. We set our mizzen-topsail to back her aft. I ordered the mizzen-topsail and spanker set to back our ship off, and asked them at the same time to run a line from their bow to our starboard bow and spring her ashore. I think the two ships dragged a little with our topsail and spanker set while they were together. I could not tell exactly how long the two ships were together, because I left for the steam-tug. I cannot tell what portion of the "Euryale" was damaged, because I was on shore and on the tug a part of the time. The "Sapphire" was chafed fore and aft, channels, fore and main, were carried away, rail broken, martingale carried away, and all the chain attached, head partially carried away, bowsprit shrouds broken, body stays broken, and *and* jib guys carried away. When I got on deck the "Euryale" was nearly alongside. I gave orders immediately to set the mizzen-topsail, and to the "Euryale" to haul her jib down. I also ordered our spanker set; also ordered fenders to be put between the 2 ships, which was done. I also asked them to run a line from their bow to ours to spring their vessel astern as we were backing off. I ordered our yards braced up to not interfere with theirs. The French people did nothing on their vessel. I then saw from what we had done, that the vessels were not going to part. I asked them to fire a gun, which they did not do. I asked them to send ashore for a
62 steamboat. Wishing to hurry the matter, I jumped from my vessel to theirs at the risk of my life, and got into her boat. As to the position of the vessels at the time they came together, I cannot state exactly. I could not see; it was dark; my eyesight is bad; coming out from the light I am a little blinded. They pulled on shore and I

jumped on the first steam-tug I met, told them there were two vessels together, and asked them to go and pull them apart. I got them there and pulled the Euryale off. She had a line ready and the tug pulled her off. When I went back the ships had changed their position on account of the tide.

Question. What was their position then, and how were they heading?

Answer. I think our vessel was heading to the tide, nearly; the wind had some effect on her; the "Euryale's" stern was a little off from our vessel and her bow under our bow. The "Euryale" passed a hawser to the steamer, and was pulled off.

Question. From what you saw of the "Euryale" sheering, what should you judge to be the amount of chain she had out?

(Objected to as incompetent, asking for the opinion of the witness and not for facts.)

Answer. 80 to 90 fathoms.

Question. When did your starboard anchor drop?

Answer. I considered her at a perfectly safe distance from us. When she first came against us she broke the lasking to our anchor; broke the ring-stopper and let the anchor down, the wind was very violent at that time. One thing I wish to state: I took the precaution to take up our anchor, since the collision, to see if it was foul. I find it perfectly clear. The wind was so violent before the "Euryale" struck us, I had a man prepared to let the anchor go a half a minute before.

Question. How much did your vessel sheer, if at all?

Answer. I could not tell; our vessel, being loaded very deep, sheered very little, if any.

Question. If you had got your 2nd anchor down in the position you described, what would have been its effect upon the sheering of your vessel?

(Objected to as asking for the opinion of the witness, and not for facts; as irregular and incompetent.)

Answer. It would have sheered her over towards the island—Goat Island.

Question. Did you anticipate any danger from the sheering of the "Euryale?"

(Objected to as asking for opinion of witness, and not for facts.)

Answer. Not the slightest. I considered her at the time at a safe distance until she came into us.

Question. What object did you anticipate by sheering your vessel with the 2nd anchor toward Goat Island, when the wind became more violent?

(Objected to as incompetent and irregular, and asking for the opinion of this witness, and not for facts.)

Answer. I expected to get the two anchors wide apart to prevent the vessel from sheering.

Cross-examination:

Question. Please give us the name of all your officers you had on board the night of the collision.

Answer. 1st officer, Mr. Waterhouse; 2nd, Sprague; 3rd, Aeaston

63 Sprague is still with me, and both the others. They have all been examined. In speaking of seeing the "Euryale" in my direct testimony, I saw her hull but once; the other times I saw her lights only. The time I saw her hull was just after I came on deck. She was then just off our starboard quarter. I could not tell the distance; it was very dark. I can't say how far I could see the hull of a ship that

night. The mate asked me at that time if I thought we were any nearer that vessel. I replied that I could not tell. I ordered the 2nd anchor let go, and ordered the 2nd mate to the wheel to sheer the vessel, so as to get the vessel in a proper position to let the 2nd anchor down. Before the order was fulfilled the "Euryale" was upon us. It was 20 minutes or half an hour before the collision that I saw the hull of the "Euryale;" then she went off, and I did not see her again until the time of the collision. When I speak of the vessel going off, I mean that the hull disappeared from my sight, and I went below then to change my clothing, which was wet, and to change my hat. When she disappeared from my sight, I supposed that she was sheering about with the tide; we being loaded and off shore did not sheer so quick; she was light. I can't judge the distance she was from us when she was sheering; the fact was, I could not see very plain. It was about 4 o'clock when I saw the vessel sheering. I am not sure of the time, as I did not look at the clock in the cabin. The flood had commenced making. It was after four, if anything. I cannot state the length of time it was before the collision; cannot recollect. The wind was blowing very heavy in squalls from S. W. to S. E.; it was raining very hard. I could not tell whether she was turning with the tide or not at the time she disappeared. The "Euryale," being in shore, turned first with the tide. I judge she turned first. I did not see her. The tide runs up sooner in shore than out. I can't tell the time when my vessel commenced turning. She was struck during the time both vessels were turning with the tide. The "Sapphire" had turned a little with the tide, perhaps 3 or 4 points, when she was struck. She was not turned half-way round, not quite one-half way round, when she was struck. I was in the cabin when the vessels struck first. It had been some little time, perhaps 15 minutes before, that I had seen any indications of the "Euryale." It was her light that I saw, but I can't say how far off. It was a changing light, changing about; changed a little with the sheering of the vessel.

Question. Was she not then turning with the tide?

Answer. Yes; she felt the tide in shore before we did. She was sheering about with the wind and tide. That was the time that I saw by her lights that she was sheering in shore. I could not see her hull. Had she then, when she sheered in shore, let go her other anchor, it would have prevented all collision.

Question. How is it that you say that she sheered in shore to such a great extent, and cannot give us any idea of the distance she sheered?

Answer. I could not tell, only seeing her *her* light. I could not tell whether she was sheering 100 or 200 feet. I will not say that she dragged her anchor at all while she sheered. From what I saw of her lights and the sheering I could not tell how much chain she had out.

Question. From what you saw of the "Euryale" sheering and her lights, will you state on your oath that she had out more than 50 fathoms?

Answer. I cannot swear as to the length of her chain, but should judge from her sheering that she had out 80 fathoms.

64 Question. Do you mean to be understood that anybody standing on the deck of your vessel on the night of the 21st of December, and looking at the lights on the "Euryale," and the changes either by sheering or turning with the tide, could tell whether the "Euryale" had out 50 or 80 fathoms of chain?

Answer. I don't think they could be positive of it. I don't think I could be positive of it.

Question. Could you see her light all the time?

Answer. No, sir; there was once when I could not see it; that was after 4 o'clock, some little time before the collision.

Question. Will you swear that the "Sapphire" did not drag her anchor on the night of the 21st before the collision?

Answer. I cannot swear to it; only thought from the bearing next day that she did not.

Question. Is the anchor in the same position now that it was the next day after the collision?

Answer. It has been moved a little, perhaps 20 feet, in lifting it to see if it was clear.

Question. Were you present when they took up the 2nd anchor?

Answer. I was on board but not forward; don't remember the day it was taken up.

Question. How did the 2nd compare with the 1st as to weight and size?

Answer. The 2nd anchor was about 200 pounds heavier than the 1st. They are both wood stock, old style. Had two small anchors weighing about 350 and 750 lbs., should judge, aboard; those are all we had and all we have now.

Question. Can you give the different position the "Sapphire" tailed in from 3 o'clock until the time she was struck?

Answer. She tailed down stream and a little off the land at different times. When the tide made up she tailed a little off the land, just as I stated before.

Question. State particularly the positions of the two vessels when they came together.

Answer. I cannot state it exactly. Our vessel was heading a little in for the town. She was turning a little with the tide.

Question. Which way was the "Euryale" turning?

Answer. As I did not see her I could not tell.

Question. Could you not tell the way she was turning from the manner and place when she struck the "Sapphire?"

Answer. She must have been turning the same way we were, of course. She could not have been turning any other way from the manner she struck us.

Question. State if there were any change in the wind as to violence, say from the time that you were on deck that night until the time of the collision.

Answer. The wind veered a little from the southeast to the southwest. I went below at 12 o'clock and slept until 3.30 or 4 o'clock when I came on deck. At 3.30 or 4 o'clock the wind, I think, was between south and southeast. I could not tell, I had no compass.

A. P. BOYD.

Subscribed and sworn to before me.

A. D. SMITH,
U. S. Comm'r.

65 UNITED STATES OF AMERICA,
Northern District of California, ss:

Andrew D. Smith, a commissioner duly appointed by the circuit court of the United States for the district of California, under and by virtue of the acts of Congress entitled "An act for the more convenient taking

of affidavits and bails in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bails in civil causes depending in the courts of the United States,'" passed March 1st, 1867, and the act entitled "An act to establish the judicial courts of the United States,' passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witnesses are material and necessary in the cause in the caption of the said deposition named.

I further certify that a notification of the time and place of taking the said deposition was waived by the proctor for libellants.

I further certify that, on the 27th day of December, in the year of our Lord one thousand eight hundred and sixty-seven, I was attended by Geo. F. Sharp, esq'r, counsel for libellant, and C. McAllister, counsel for claimants, and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing, in the presence of the witness', and from their statement', and after carefully reading the same to the witnesses they subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same, with my own hand, to the court for which the same are taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the named in the said caption.

In testimony whereof I have set my hand and seal this 30th day of December, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the United States the 92.

A. D. SMITH,
United States Commissioner, duly appointed by the Circuit Court of the United States for the District of California.

G. E. W., cl'k, By A. D. G., D. C. (Endorsed:) Filed 31st day December, 1867.

G. E. WHITNEY,
A. E. SMITH, *Dep'y.*

Order.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Tuesday, the nineteenth day of May, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Ogden Hoffman, judge.

NAPOLEON III, EMPEROR OF THE FRENCH,
vs.
THE SHIP SAPPHIRE, ETC.,

66 And now, at this day, the court files its written opinion herein, and it is thereupon ordered that a decree be entered in favor of libellant, in accordance with said opinion.

Order.—Reference to commissioner.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Tuesday, the eleventh day of August, in the year of our Lord one thousand eight hundred and sixty-eight.

Present, the Honorable Ogden Hoffman, judge.

NAPOLEON III, EMPEROR OF THE FRENCH,
vs.
SHIP "SAPPHIRE."

This cause having been heard on the pleadings and proofs, and due deliberation being had in the premises, it is now ordered, adjudged, and decree' that the said libellant recover the amount of his damage sustained by him in consequence of the collision in his said libel described and set fourth; and it is further ordered that the said cause be referred to John O'Wheeler, as commissioner, to ascertain and compute the amount of the said damage due to said libellant in the premises, and that he report the same to this court with all convenient speed.

Order of reference.

UNITED STATES OF AMERICA,
District of California, ss:

District court of the United States, August, 1868.

At a stated term of the district court of the United States, begun and holden at the city of San Francisco within and for the district of California, on the first Monday of April, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Ogden Hoffman, district judge.

NAPOLEON III, EMPEROR OF THE FRENCH,
libellant,
vs.
THE SHIP SAPPHIRE, ETC., TRUEFANT ET AL.;
claimants.

This cause having been heard on the pleadings and proofs, and due deliberations being had in the premises, it is now ordered, adjudged, and decreed that the said libellant recover the amount of his damages sustained by him in consequence of the collision in his said libel described and set forth; and it is further ordered that the said cause be referred to John O'Wheeler, esq., as a commissioner to ascertain and compute the amount of the said damages due the said libellant in the premises, & that he report the same to this court with all convenient speed.

OGDEN HOFFMAN,
District Judge.

Filed Aug. 11th, 1868.

GEO. E. WHITNEY, *Clerk.*
By S. NEAL, *D. C.*

67 *Order amending interlocutory decree.*

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San

Francisco, on Thursday, the 20th day of August, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Ogden Hoffman, district judge.

THE EMPEROR OF THE FRENCH
vs.
THE SHIP "SAPPHIRE," ETC.

By consent of parties, it is hereby ordered that the interlocutory decree entered in this cause on the 16th of August, 1868, be amended by striking out the name of John O'Wheeler, who declines to act, and inserting instead thereof the name of Geo. E. Whitney as commissioner to ascertain the damage, &c.

OGDEN HOFFMAN,
District Judge.

Filed & ent. Aug. 20, 1868.

GEO. E. WHITNEY, *Clerk*,
By S. NEAL, *D. C.*

Order.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Monday, the fourth day of January, in the year of our Lord one thousand eight hundred and sixty-nine:

Present, the Honorable Ogden Hoffman, judge.

NAPOLEON III, EMPEROR OF THE FRENCH,
vs.
THE SHIP "SAPPHIRE," &c.

On motion of Milton Andres, esquire, proctor for libellant, ordered that the report of the commissioner, to whom the case was referred to assess damages, be filed and published.

Report of commissioner.

In the district court of the United States in and for the district of California.

NAPOLEON III, EMPEROR OF THE FRENCH,
vs.
THE SHIP SAPPHIRE, HER TACKLE, &c.

In pursuance of a decretal order made in the above-entitled cause, on the 16th day of August, 1868, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount of the damage due libellant by reason of the collision in his said libel described and set forth, and to report to this court thereon with all convenient speed, I, George E. Whitney, to whom the matter was referred, do report that I have been attended by the proctor of the respective parties, and have taken and examined all the testimony offered in support of libellant's claim, which is hereto annexed and returned into court with this report, as a part thereof, and that no testimony was offered by the proctor for claimants.

68 Upon the testimony taken before me as aforesaid, I report that there is due to the libellant, as damages sustained by him by reason of said collision, the sum of sixteen thousand four hundred and seventy-four dollars.

Dated at San Francisco, this 12th day of December, A. D. 1868.

Respectfully submitted,

GEO. E. WHITNEY,
Com'n'r of the U. S. Courts, Dist. of California.

In the district court of the United States, district of California.

NAPOLEON, III, &c., }
vs.
SHIP SAPPHIRE, &c. }

Be it remembered that, on this 10th day of October, A. D. 1868, before me, the undersigned, a commissioner of the U. S. circuit court for said district of California, to whom was referred the matter of assessing the damages in the above-entitled case, came Melville Simmons, a witness on behalf of the libellant, who, by me being first sworn to testify to the whole truth, testified as below.

Milton Andros, esqr., appeared as proctor for libellants, and Cutler McAllister appeared as proctor for claimants.

Examination-in-chief by proctor for libellants:

Question. What is your name, age, place of residence, and occupation?

Answer. My name is Milville Simmons. My age is sixty years and upwards. My place of residence is Mare Island navy-yard; and my occupation is naval constructor. Knew the French naval vessel, the "Euryale." In the month of September, 1867, she came first to this yard for repairs. She came a second time to the yard for repairs some time about Christmas-time. She was then in a damaged condition. The damages were repaired at this yard, under my supervision.

On her second visit the repairs done on her were made in accordance with a survey made by Captain Waterman and myself. There were other repairs made not called for by the survey, but those other repairs were made necessary by her damaged condition. In removing timbers that were damaged it was necessary to remove some that were not damaged. In removing the pin-rails that were broken we found two or three planks on the bulwarks on the inside that were affected by rot. They were removed. No separate account of the expense of replacing these planks was kept. It was probably from $150 to $200. All other repairs were made in consequence of the damages sustained. I find upon examination that on her second visit she arrived here on the 26th of December, 1867, and sailed on the 11th of March, 1868. The damages spoken of above were damages that were told to me to have occurred by same collision.

Nothing was done except that was necessary to put her in seaworthy condition.

The repairs were conducted in the same manner as in the repairs of one of our own Government vessels.

This was done under directions of the Secretary of the Navy. There was no charge for docking. The only expenses charged were for labor and materials. They amounted in all to 14,653.55, in currency.

This was the expense incurred here. At the time we made a survey we

made a probable estimate of the expense of putting her in repairs.

69 It was, however, found, as the work progressed, that other repairs were necessary below the water-line, which we had not estimated; repairs necessary in consequence of the collision. The estimate was $8,375.94, in gold coin.

The injuries subsequently discovered were amidships below the water-line. In order to repair these damages, it would be necessary either to dock her or heave her down. The estimate made on the survey was at the time reduced to writing and signed.

It is almost impossible to make an accurate estimate of that kind.

On cross-examination the witness said:

Question. What was the condition of the "Euryale" on her first visit in September, and what repairs were made upon her?

(Objected to as immaterial.)

Answer. When she first came here it was reported by captain that her copper was off, and he wanted to have an examination for the purpose of looking at the sheathing copper. When docked, it was found much of the copper was off, and he desired to have the copper stripped off. The seams were found in bad condition, and she was recaulked, resheathed, and repainted. Some repairs were also made to her spars and bolts, and the planking outside; some pieces were put in.

Question. On the second visit, were any additions made in the way of strengthening her to a greater extent than the condition she was in on the'r first visit, putting in any extra knees that she did not have originally, or anything of that kind?

(Objected to as immaterial.)

Answer. We put in 3 or 4 new beams on the berth-deck to replace those that were broken, and the beams were kneed of' in order to give additional strength to her side where the damage was done, to make her as strong as before. The ceiling-plank were not removed, but the knees were put on the outside. We found the knees necessary in order to make her as strong as she was before. Nothing was done to the vessel, except the 2 or 3 planks mentioned, that was not rendered necessary by the collision.

Question. What was the amount of money expended on the repairs of the "Euryale" on her first visit?

(Objected to as immaterial.)

Answer. Seven thousand one hundred and ninety-seven $\frac{65}{100}$ dollars, currency.

Question. According to the best of your judgment, what was the value of the "Euryale," before repaired, on her first visit?

(Objected to as immaterial.)

Answer. I did not pay particular attention. She was very strongly built as a war vessel, and built of the very best material. I don't know her cost. I judge, when she was built, her hull might have cost $20,000 or $30,000 in gold coin, built in France. I think I could build as good a vessel here for the same price. We put no exact repairs in her. We did nothing but what was necessary to make her seaworthy. She was no better, probably not so good, as she was before the collision.

MEVILLE SIMMONS.

Subscribed and sworn to before me, at Vallejo, in said district, on this 10th day of October, A. D. 1868.

GEO. E. WHITNEY,
Commissioner, &c.

70 District court of the United States for the district of California.

NAPOLEON III, ETC.,
vs.
SHIP SAPPHIRE, ETC.

Be it remembered that, on this 14th day of Oct'r, A. D. 1868, at my office in the United States court building in the city of San Francisco, personally appeared before me, Geo. E. Whitney, a commissioner to take acknowledgment of bail and affidavits, etc., duly appointed by the circuit court of the United States for the district of California, A. Parrayon, a witness on the behalf of the libellant in the above-entitled suit.

M. Andros, esq'r., appeared as proctor for the libellant, and Cutler McAllister, esq'r., as proctor for the claimants.

And the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as follows, that is to say:

In the district court of the United States, dist. of California.

NAPOLEON III, &C.,
vs.
SHIP SAPPHIRE, ETC.

My name, August Parrayon; am commander of the French ship "Euryale;" was in command of her in December last, when she collided with the "Sapphire."

I went to the navy-yard at Mare Island to repair the damages in consequence of the collision. I paid for towage up and down $250, gold. I paid for pilotage to and from $300, gold. After we*e* were towed away from the "Sapphire" on the morning after the collision, we were towed to anchor*ed* and on the south side of Alcatraz Island. I don't know by whom we were anchored. I was not on board. I think two days after we were obliged to be towed from this anchorage to North Point.

We came near being lost where we were. We were first anchored off "Alcatraz," and we were removed by the harbor-master, Mr. Houseman.

I asked for it, and he found it to be necessary. We had to buy an anchor to replace the starboard waist anchor which had been lost in consequence of the collision. We found one anchor, but this one we could not find. I paid for this anchor $281.20, gold. The value of the anchor I bought is not half the value of the one I lost. The one I lost was a little less than 4,000 lbs.; the one I bought was about 2,500 lbs. The one I bought was delivered at San Francisco, but, in order to fit the davits, I was obliged to have it sent to Mare Island. The freight to Mare Island was $25. I paid $300, coin, to the "Goliah" for being removed from off "Alcatraz" Island to "North Point." I purchased $168 of wire rigging at San Francisco to replace that damaged by the collision. This is not included in the expenses which I incurred at the island. After the collision I recovered one anchor and chain which was shipped in consequence of the collision.

Mr. De Fries recovered the anchor and chain, for which I paid him $150, coin.

A. PARRAYON.

71 Subscribed and sworn to this 14th day of October, 1868, before me.

GEO. E. WHITNEY,
Com'r U. S. Courts, Dist. of California.

(Endorsed:) Filed and published January 4th, 1869, by order of com'r.
GEO. E. WHITNEY, *Clk*,
By A. D. GRINWOOD, *D. C.*

Notice.

UNITED STATES OF AMERICA, *District of California, ss:*

District court of the United States, January 5th, 1869.

NAPOLEON III, EMPEROR OF FRENCH,
vs.
SHIP "SAPPHIRE," ETC. } In admiralty.

GENTLEMEN: Please take notice that the report of the commissioner, to whom said cause was referred to assess damages, has been filed and published, and that on Saturday morning, January 9th, 1869, at 11 o'clock, before said court, I shall move that the same be affirmed, and a decree be entered in accordance therewith.

Yours truly,

MILTON ANDROS,
Proctor Libellant.

Messrs. H. & C. MCALLISTER,
Proctor for Claimants.

Service admitted this 5th day of Janu'y, 1869.
H. & C. MCALLISTER AND BERGIN.

Filed Jan'y 5th, 1868.

GEO. E. WHITNEY, *Clerk*,
By H. F. LARDNER, *D. C.*

Order.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Saturday, the ninth day of January, in the year of our Lord one thousand eight hundred and sixty-nine:

Present, the Honorable Ogden Hoffman, judge.

NAPOLEON III, EMPEROR OF THE FRENCH,
vs.
THE SHIP "SAPPHIRE."

Ordered, on motion of Mr. Andros, (proctor for claimant not appearing to object,) that the libellant's motion for confirmation of the commissioner' report herein, heretofore noticed for this day, be, and the same is hereby, continued until Tuesday, January 12th, A. D. 1869.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of

72 San Francisco, on Tuesday, the twelfth day of January, in the year of our Lord one thousand eight hundred and sixty-nine:
Present, the Honorable Ogden Hoffman, judge.

NAPOLEON III, EMPEROR OF THE FRENCH,
vs.
SHIP SAPPHIRE, &c.

On motion of Milton Andros, esqr., proctor for libellant, no one appearing to *appear* the same, ordered that the report of the commissioner heretofore filed herein be, and the same is hereby, in all things confirmed.

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Wednesday, the thirteenth day of January, in the year of our Lord one thousand eight hundred and sixty-nine:
Present, the Honorable Ogden Hoffman, judge.

NAPOLEON III, EMPEROR OF THE FRENCH,
vs.
THE SHIP SAPPHIRE ET AL.

In this cause due consideration having been thereon had, it is by the court now here ordered that the decree this day signed in favor of the libellant be forthwith filed and entered herein.

Final decree.

UNITED STATES OF AMERICA,
District of California, ss:

District court of the United States, January 13th, 1869, in admiralty.

At a stated term of the district court of the United States of America, holden at San Francisco, within and for the district of California, on the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-eight:
Present, the Honorable Ogden Hoffman, district judge.

NAPOLEON III, EMPEROR OF THE FRENCH,
vs.
THE SHIP "SAPPHIRE," ETC., G. C. TRUEFANT et al., claimants.

And now, on reading and filing the report of George E. Whitney, the commissioner to whom the above matter was referred, to ascertain and report the amount of damages due the libellant, by which there is reported due the said libellant, for damages demanded in said libel, the sum of sixteen thousand four hundred and seventy-four dollars, it is now ordered, adjudged, and decreed, on motion of Milton Andros, proctor for the libellant, that the said report be, and the same hereby is, in all things conformed; and that the said G. C. Truefant and the said J. R. Tibbitts, the owners of said ship "Sapphire," and claimants thereof in this cause, do pay to the said libellant the sum of fifteen thousand dollars, being a part of the sum so reported as due to him, and

the amount demanded in said libel. And on like motion it is further
73 ordered, adjudged, and decreed that a summary judgment be, and the same hereby is, entered against the said G. C. Truefant and the said J. R. Tibbitts, claimants and owners of said ship "Sapphire," etc., and Henry Blanchard, sureties on the bond given for the value of said ship on her release for fifteen thousand dollars; and that the said libellant have execution therefor, and for his costs.

OGDEN HOFFMAN,
Dist. Judge.

Filed January 13th, 1869.

GEO. E. WHITNEY,
By A. D. GRIMWOOD, *D. C.*

In the district court of the United States for the district of California.

THE EMPEROR OF THE FRENCH, NAPOLEON III, libellant,
vs.
SHIP "SAPPHIRE," &C., ET AL., CLAIMANTS.

Please take notice that the claimants herein intend to appeal to the circuit court of the United States for the district of California, from the final decree of the court in this case.

Dated San Francisco, Jan'y 22d, 1869.

H. & C. MCALLISTER,
Proctors for Claimants.

To GEO. F. and W. H. SHARP,
Proctors for Libellant,
And GEORGE E. WHITNEY,
Clerk of said Court.

Due service of a copy of within notice of appeal upon us this day hereby admitted.

Dated San Francisco, Jan'y 23, 1869.

MILTON ANDROS,
Proctor for Libellant.

Filed January 23d, A. D. 1869.

GEO. E. WHITNEY, *Clerk.*
By A. D. GRIMWOOD, *D. C.*

In the district court of the United States for the district of California.

THE EMPEROR OF THE FRENCH, NAPOLEON III,
v.
THE SHIP "SAPPHIRE," ETC., & ALS.

I, George E. Whitney, clerk of the district court of the United States for the district of California, do hereby certify that the foregoing one hundred and ninety-nine pages constitute a full and true transcript of the record and proceedings of the said district court in the above-entitled case, on appeal from the said court to the circuit court of the United States for said district.

In testimony whereof I have hereunto set my hand and affixed
74 the seal of said court, at San Francisco, this 10th day of June, A. D. 1869, and of our Independence the ninety-third.

GEO. E. WHITNEY, *Clerk.*
By A. D. GRIMWOOD, *D. C.*

Apostles filed in circuit court June 10th, 1869.
GEO. E. WHITNEY, *Clerk.*
By C. W. GRANT, *Deputy.*

Bond on release.

District court of the United States for the northern district of California.

Know all men by these presents that we, Truefant and Tibbetts, claimants, and Henry B. Williams and H. P. Blanchard, sureties, are held and firmly bound unto Charles W. Rand, esquire, marshal of the United States for the northern district of California, in the sum of thirty thousand dollars, to be paid to the said Charles W. Rand; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the 31st day of December, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas a libel has been filed in the district court of the United States for the northern district of California, on the 24th day of December, in the year of our Lord one thousand eight hundred and sixty-seven, by the Emperor of the French, Napoleon III, libellant, against the ship "Sapphire," &c., for the sum of fifteen thousand dollars, on which process of attachment has issued, and the said ship "Sapphire," &c., is in custody of the marshal under the said attachment, and Truefant and Tibbetts, claimants, has applied for a discharge of said ship "Sapphire," &c., from the custody of the marshal, and has filed a claim claiming the said ship "Sapphire," &c., as owner, and has filed a stipulation for the claimants' costs, pnrsuant to the rules and practice of the said court:

Now, therefore, the condition of this obligation is such, that if the above-bounden Truefant and Tibbetts, claimants, shall abide by and perform the decree of this court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

TRUEFANT AND TIBBETTS,
By A. P. BOYD. [L. S.]
H. B. WILLIAMS. [L. S.]
HENRY P. BLANCHARD. [L. S.]

Sealed and delivered, and taken and acknowledged, this 31st day of Dec'r, 1867, before me.

A. D. SMITH,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Northern District of California, ss:

H. P. Blanchard and H. B. Williams, being duly sworn, deposes and says, each for himself, that he is worth the sum of thirty thousand dollars over and above all his just debts and liabilities.

H. B. WILLIAMS.
HENRY P. BLANCHARD.

75 Sworn to this 31st day of Dec'r, A. D. 1867, before me.
A. D. SMITH,
U. S. Commissioner.

cisco, on the 24th day of June, in the year of our Lord one thousand eight hundred and sixty-nine:

Present, Honorable Stephen J. Field, judge of the court and associate justice of the Supreme Court of the United States.

THE SHIP "SAPPHIRE," ETC., G. C. TRUEFANT & J. R. Tibbetts, claimants and appellants,
vs.
THE EMPEROR OF THE FRENCH, NAPOLEON III, Emperor of the French, libellant and appellee.
} In admiralty.

This case having been brought on for hearing on appeal from the district court of the United States for the district of California, upon the transcript on file, and no new proof having been taken in the cause in this court, and said transcript and arguments of the advocates for the respective parties having been examined and heard, now, on this day, it is ordered, pronounced, and decreed that the said libellant and appellee do have and receive of this said claimants and appellants the sum of fifteen thousand dollars and the costs taxed in the court below at one hundred and fifteen dollars and fifty cents and also the costs to be taxed in this court.

And it is further ordered, pronounced, and decreed that a summary judgement be, and the same hereby is, entered against G. C. Truefant and J. R. Tibbetts, the appellants, and Henry B. Williams & Henry P. Blanchard, sureties on the appeal-bond on file herein, for the said amounts, and that the libellants and appellee do have execution therefor.

Filed 4.

(Endorsed:) Filed July 2nd, 1869.

GEO. E. WHITNEY, *Clerk*,
By C. W. GRANT, *Dep'y*.

At a stated term of the circuit court of the United States for the district of California, held, pursuant to adjournment, at San Francisco, on Tuesday, the 6th day of July, 1869:

Present, Hon. Stephen J. Field, judge.

THE SHIP "SAPPHIRE," ETC.,
vs.
THE EMPEROR OF THE FRENCH.

On motion of advocate for claimant and appellant, it is ordered that an appeal to the Supreme Court of the United States from the decision of this court be, and the same is hereby, allowed.

Appeal to Supreme Court.

In the circuit court of the United States for the district of California, in the ninth circuit.

SHIP "SAPPHIRE," & TRUEFANT AND TIBBETTS, claimants and appellants,
vs.
NAPOLEON III, EMPEROR OF THE FRENCH, libellant and appellee.

78 To the honorable the Supreme Court of the United States:

The appeal of Truefant and Tibbits, the above-named appellants, respectfully showeth that, on the 24th day of December, A. D.

1867, the above-named Napoleon III, Emperor of the French, filed his libel in the district court of the United States for the district of California against the ship "Sapphire," her tackle, apparel, &c., in a cause civil and maritime, for the recovery of damages alleged to have been sustained by him to the French transport "Euryale" by collision with the said ship "Sapphire" in the bay of San Francisco; and that the said ship "Sapphire" was arrested upon process issued upon said libel, and was discharged on your petitioners filing their claim and entering into stipulation; and your petitioners, therefore, filed their answer to said libel, and such proceedings were had in the said cause that, on the 13th day of January, A. D. 1869, a final decree was made and pronounced therein by the said district court, whereiu it was in substance adjudged that the said libellant recover against the ship "Sapphire," her tackle, &c., the sum of fifteen thousand dollars, together with costs.

And that after such final decree your petitioners duly appealed therefrom to the circuit court of the United States for the district of California, and the said cause was removed thereby into the said circuit court and there tried anew, and such proceedings were had in the said circuit court that, afterwards, on the second day of July, A. D. 1869, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed, with costs, and that the said appellee have execution, and that the stipulators cause their stipulations to be fullfilled; which said decree of the said circuit court is, as these appellants are advised, erroneous, and ought to be reversed.

Whereupon these appellants appeal from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully pray that the said decree of the said circuit court and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew; and that the said decree of the circuit court and every part thereof may be reversed, and a decree made dismissing said libel, with costs, or such other decree as to the said Supreme Court shall seem just.

Dated San Francisco, July 15th, 1869.

H. & C. MCALLISTER,
Proctors for Appellants.
TRUFANT AND TIBBETS,
By WILLIAMS, BLANCHARD & CO'Y, *Ag'ts.*

(Endorsed:) Filed July 16th, 1869.
GEO. E. WHITNEY, *Clerk.*
By C. W. GRANT, *Dep'y.*

Citation.

By the Honorable Ogden Hoffman, judge of the district court of the United States for the district of California, and associate judge of the circuit court of the United States for the district of California, to Napoleon III, Emperor of the French:

Whereas Truefant and Tibbetts, claimants of the ship "Sapphire," her tackle, &c., have lately appealed to the Supreme Court of the
79 United States from a decree lately rendered in the circuit court of the United States for the district of California, in the ninth circuit, made in favor of you, the said Napoleon III, Emperor of the French, against the said ship "Sapphire," her tackle, &c., and have filed

the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on or before the first day of December next, to do and receive what may appertain to justice tobe done in the premises.

Given under my hand, at the city of San Francisco, in the district of California, in the ninth circuit, the 26th day of July, A. D 1869, and in the year of the Independence of the United States the ninety-fourth.

G. E. W., cl'k.
By A. D. G., D. C.

OGDEN HOFFMAN,
Dist. Judge.

Service of a copy of within citation upon us this day hereby acknowledged.

San Francisco, July 26, 1869.

MILTON ANDROS,
Proctor for Appellee.

(Endorsed :) Filed July 26th, 1869.

GEO. E. WHITNEY, *Clerk*,
By A. D. GRIMWOOD, *D. C.*

In the United States circuit court, district of California.

SHIP "SAPPHIRE," ETC., & AL., CLAIMANT & appellant,
vs.
NAPOLEGN III, EMPEROR OF THE FRENCH, libel't & appellee.

It is hereby stipulated and agreed that the testimony and depositions contained in the transcript of said cause on file herein shall constitute the statement of evidence on appeal required by the rules of this court.

July 6th, 1869.

G. F. & W'M H. SHARP,
MILTON ANDROS,
Proctors for Appellees.
H. & C. MCALLISTER,
Proctors for Appellants.

Filed July 26th, 1869.

GEO. E. WHITNEY, *Clerk*,
By A. D. GRIMWOOD, *D. C.*

I, George E. Whitney, clerk of the circuit court of the United States for the district of California, hereby certify that the foregoing one hundred and forty-nine pages of writing are a full and true copy of the record and proceedings in said circuit court in the cause of the ship "Sapphire," etc., & al., claimants and appellants, vs. Napoleon III, Emperor of the French, libellant and appellee, now on appeal from said circuit court to the Supreme Court of the United States.

In witness whereof I have hereunto set my hand and affixed
80 the seal of said circuit court, at San Francisco, in the district of California, this 25th day of October, A. D. 1869, and of the Independence of the United States the ninety-fourth.

[SEAL.] GEO. E. WHITNEY, *Clerk.*

(Indorsement on cover:) No. 332. The ship Sapphire, &c., G. C. Truefant and J. R. Tibbetts, claimants, appellants, vs. Napoleon III, Emperor of the French. California C. C. U. S.
Filed 7th December, 1869.

(Indorsement on cover:) No. 341. The ship "Sapphire," &c., G. C. Truefant and J. R. Tibbits, claimants, appellants, vs. Napoleon III, Emperor of the French. California C. C. U. S. Filed 30th January, 1872.

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